

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): June 3, 2020

Libbey Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation)

1-12084
(Commission File Number)

34-1559357
(IRS Employer identification No.)

300 Madison Avenue, Toledo, Ohio
(Address of principal executive offices)

43604
(Zip Code)

Registrant's telephone number, including area code: **(419) 325-2100**

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

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, \$.01 par value	LBY ⁽¹⁾	NYSE American ⁽¹⁾

(1) On June 1, 2020, the staff of NYSE Regulation, Inc. notified Libbey Inc. (the "Company") that it would apply to the Securities and Exchange Commission (the "SEC") to delist the Company's common stock upon completion of all applicable procedures. The delisting will be effective 10 days after a Form 25 is filed with the SEC. The deregistration of the common stock under section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") will be effective 90 days, or such shorter period as the SEC may determine, after filing of the Form 25. Upon deregistration of the common stock under Section 12(b) of the Exchange Act, the common stock will remain registered under Section 12(g) of the Exchange Act. Trading of the Company's common stock now occurs on the OTC Pink marketplace under the symbol "LBYYQ."

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions (see General Instructions 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))

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement

As previously disclosed, on June 1, 2020 (the “Petition Date”), Libbey Inc. (the “Company”), Libbey Glass Inc. (“Libbey Glass”), and each direct and indirect domestic subsidiary of Libbey Glass (each a “Libbey Subsidiary” and, together with the Company and Libbey Glass, the “Company Parties”) commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Chapter 11 Cases are being jointly administered under the caption *In re: Libbey Glass Inc., et al.*, Case No. 20-11439 (LSS).

DIP Term Loan Credit Facility

In connection with the Chapter 11 Cases, on the Petition Date, the Company filed a motion (the “DIP Motion”) seeking, among other things, approval of senior secured debtor-in-possession financing on the terms and conditions set forth in a proposed Superpriority Secured Debtor-in-Possession Credit Agreement (the “DIP Term Loan Credit Agreement”). On June 3, 2020, the Bankruptcy Court entered an order approving, on an interim basis, the financing to be provided pursuant to the DIP Term Loan Credit Agreement (the “Interim Order”) and on June 3, 2020, the DIP Term Loan Credit Agreement was entered into by and among the Company, Libbey Glass, as borrower, the other Company Parties and each of Libbey Glass’ subsidiaries organized under the laws of the Netherlands, Portugal or Mexico, except Crisa Libbey, S.A. de C.V., as guarantors (together with the Company, collectively, the “Guarantors”), Cortland Capital Market Services LLC (“Cortland”), as administrative agent and collateral agent, and the lenders party thereto from time to time.

The DIP Term Loan Credit Agreement provides for, among other things, term loans in an aggregate amount of up to \$60,000,000 (the “DIP Term Loan Facility”), exclusive of a portion of prepetition term loans to be rolled up in accordance with the terms of the DIP Term Loan Facility, of which \$30,000,000 was made available following the entry of the Interim Order and satisfaction of certain customary conditions. The remainder of the DIP Term Loan Facility will remain unavailable unless and until the Bankruptcy Court enters a final order approving the DIP Term Loan Credit Agreement (the “Final Order”). The interest rates for loans outstanding under the DIP Term Loan Facility will be, at the option of Libbey Glass, either (i) the Eurocurrency Rate (as defined in the DIP Term Loan Credit Agreement) plus 11.00% per annum, subject to a minimum Eurocurrency Rate floor of 1.00% per annum, or (ii) the Base Rate (as defined in the DIP Term Loan Credit Agreement) plus 10.00% per annum, subject to a minimum Base Rate floor of 2.00% per annum. Upon the occurrence and during the continuance of an event of default under the DIP Term Loan Credit Agreement, the outstanding amounts under the DIP Term Loan Facility bear interest at an additional 2.00% per annum above the interest rate otherwise applicable.

The DIP Term Loan Credit Agreement will mature on the earliest of (i) 35 days following the Petition Date, or such later date as agreed to by the Required Lenders (as defined in the DIP Term Loan Credit Agreement), if the Final Order shall not have been entered by such date, (ii) the effective date of any Chapter 11 plan for the reorganization of any of the Company Parties, (iii) the date on which all or substantially all of the assets of the Company Parties are sold in a sale under a Chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code, (iv) 180 days following the Petition Date and (v) the date that all loans become due and payable in full in accordance with the terms of the DIP Term Loan Credit Agreement, including due to acceleration upon the occurrence of an event of default.

The proceeds of the DIP Term Loan Facility will be used (i) to pay fees and expenses in connection with the DIP Term Loan Credit Agreement and related loan documents, (ii) for working capital of the Company Parties following commencement of the Chapter 11 Cases, and (iii) to pay adequate protection payments to the agents and lenders under the Pre-Petition Term Loan Credit Agreement (as defined in the DIP Term Loan Credit Agreement) and related loan documents, in all cases in accordance with applicable orders from the Bankruptcy Court and the approved budget prepared pursuant to the DIP Term Loan Credit Agreement.

The DIP Term Loan Credit Facility contains customary representations and warranties and affirmative and negative covenants, including, but not limited to, covenants requiring the Company Parties to timely comply with certain milestones relating to the Chapter 11 Cases and covenants regarding customary financial reporting (including rolling 13-week cash flow forecasts), certain employment matters, and limitations on incurring additional indebtedness, creating liens on assets, making investments, loans or advances, engaging in mergers, consolidations, sales of assets and acquisitions, paying dividends and distributions and making payments in respect of junior or pre-petition indebtedness, in each case subject to customary exceptions for debtor-in-possession loan agreements of this type.

The DIP Term Loan Credit Facility also contains customary events of default, upon the occurrence of which the obligations under the DIP Term Loan Credit Facility may be accelerated, including, but not limited to payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain indebtedness, insolvency proceedings of certain subsidiaries, certain events under ERISA, unstayed judgments in respect of obligations involving an aggregate liability in excess of \$500,000, change of control, or any of the collateral documents ceasing to be in full force and effect. Certain bankruptcy-related events are also events of default, including, but not limited to, the dismissal by the Bankruptcy Court of any of the Chapter 11 Cases, the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, the appointment of a trustee pursuant to Chapter 11 of the Bankruptcy Code, and certain other events related to the impairment of the rights or liens granted to the lenders under the DIP Term Loan Credit Agreement.

The obligations under the DIP Term Loan Credit Facility are jointly and severally guaranteed by the Guarantors and all of the obligations under such facility, subject to certain exclusions, are secured by substantially all of the assets of the Guarantors and Libbey Glass, with such security interests entitled to the priority as set forth in the DIP Intercreditor Agreement (as defined below) and the Interim Order.

The DIP Term Loan Credit Agreement is subject to final approval by the Bankruptcy Court, which has not been obtained at this time. The foregoing description of the DIP Term Loan Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the DIP Term Loan Credit Agreement, which is filed as Exhibit 4.1 to this Current Report on Form 8-K and incorporated herein by reference.

DIP ABL Credit Facility

In connection with the Chapter 11 Cases, on the Petition Date, the Company filed the DIP Motion seeking, among other things, approval of senior secured

debtor-in-possession financing on the terms and conditions set forth in a proposed Debtor-In-Possession Credit Agreement (the “DIP ABL Credit Agreement” and, together with the DIP Term Loan Credit Agreement, the “DIP Credit Agreements”). On June 3, 2020, the Bankruptcy Court entered the Interim Order approving, on an interim basis, the financing to be provided pursuant to the DIP ABL Credit Agreement and on June 3, 2020, the DIP ABL Credit Agreement was entered into by and among Libbey Glass and Libbey Europe B.V., as borrowers (the “ABL Borrowers”), the other Guarantors, the lenders party thereto from time to time, and JPMorgan Chase Bank, N.A., as administrative agent.

Pursuant to the terms of the DIP ABL Credit Agreement, the ABL Borrowers are permitted to borrow and utilize revolving credit loans of up to \$100,000,000, subject to a borrowing base comprised of certain inventory and accounts receivables of the ABL Borrowers, the other Company Parties and the Guarantors organized under the laws of the Netherlands, and subject to updated borrowing base certificates to be provided by Libbey Glass and approved by certain of the lenders under such facility (the “DIP ABL Facility”). Certain advances under the DIP ABL Facility shall be deemed to refinance Libbey Glass’s obligations (including issued but undrawn letters of credit) under the ABL Borrowers’ prepetition Existing Credit Agreement (as defined in the DIP ABL Credit Agreement) on a rolling basis. On June 3, 2020, at closing of the DIP ABL Facility, the Debtors had \$15,395,000 in borrowing availability based on the borrowing base certificate delivered at close. Loans under the DIP ABL Credit Facility bear interest, at the option of the ABL Borrowers, of either (i) the Adjusted LIBO Rate (as defined in the DIP ABL Credit Agreement) plus 3.50% per annum or (ii) the CB Floating Rate (as defined in the DIP ABL Credit Agreement) plus 2.50% per annum.

The DIP ABL Credit Agreement will mature on the earliest of (i) the date that is 180 days after the Petition Date, (ii) the consummation of a sale of all or substantially all of the Company Parties’ assets, (iii) if the Final Order has not been entered, the date that is 35 days after the Petition Date (or such later date to which the deadline for the entry of the Final Order may be extended as set forth in the DIP ABL Credit Agreement), (iv) the effective date of a Chapter 11 plan of reorganization, (v) the maturity date as set forth in the DIP Term Loan Credit Agreement or (vi) any earlier date on which the commitments under the DIP ABL Facility are permanently reduced to zero or otherwise terminated pursuant to the terms thereof.

The proceeds of the DIP ABL Facility will be used (i) to refinance outstanding amounts due and owing under the Existing Credit Agreement, (ii) to pay fees and expenses in connection with the DIP ABL Credit Agreement and related loan documents, (iii) for working capital of the ABL Borrowers following commencement of the Chapter 11 Cases, and (iv) to pay adequate protection payments to the agents and lenders under the Existing Credit Agreement and related loan documents, in all cases in accordance with applicable orders from the Bankruptcy Court and the approved budget prepared pursuant to the DIP ABL Credit Agreement.

The DIP ABL Credit Facility contains customary representations and warranties and affirmative and negative covenants, including, but not limited to, covenants requiring the Company to timely comply with certain milestones relating to the Chapter 11 Cases, and covenants regarding customary financial reporting (including rolling 13-week cash flow forecasts), and limitations on incurring additional indebtedness, creating liens on assets, making investments, loans or advances, engaging in mergers, consolidations, sales of assets and acquisitions, paying dividends and distributions and making payments in respect of junior or pre-petition indebtedness, in each case subject to customary exceptions for debtor-in-possession loan agreements of this type.

The DIP ABL Credit Agreement also contains customary events of default, upon the occurrence of which the obligations under the DIP ABL Credit Facility may be accelerated, including, but not limited to payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain indebtedness, insolvency proceedings of certain subsidiaries, certain events under ERISA, unstayed judgments in respect of obligations involving an aggregate liability in excess of \$500,000, change of control, or any of the collateral documents ceasing to be in full force and effect. Certain bankruptcy-related events are also events of default, including, but not limited to, the dismissal by the Bankruptcy Court of any of the Chapter 11 Cases, the conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, the appointment of a trustee pursuant to Chapter 11 of the Bankruptcy Code, and certain other events related to the impairment of the rights or liens granted to the lenders under the DIP ABL Credit Agreement.

The obligations under the DIP ABL Credit Facility are jointly and severally guaranteed by the ABL Borrowers and the Guarantors, and all of the obligations under such facility, subject to certain exclusions, are secured by substantially all of the assets of the ABL Borrowers and the Guarantors, with such security interests entitled to the priority as set forth in the DIP Intercreditor Agreement and the Interim Order.

The DIP ABL Credit Agreement is subject to final approval by the Bankruptcy Court, which has not been obtained at this time. The foregoing description of the DIP ABL Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the DIP ABL Credit Agreement, which is filed as Exhibit 4.2 to this Current Report on Form 8-K and incorporated herein by reference.

DIP Intercreditor Agreement

On June 3, 2020, Libbey Glass, the Company, and the other Guarantors entered into an Amended and Restated Intercreditor Agreement (the “DIP Intercreditor Agreement”) with J.P. Morgan Europe Limited, in its capacity as administrative agent with respect to the Netherlands loans under the Existing ABL Loan Agreement (as defined in the DIP Intercreditor Agreement) and as designated collateral agent under the DIP ABL Credit Agreement for certain Collateral (as defined in the DIP Intercreditor Agreement), JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the DIP ABL Credit Agreement and as administrative agent under the Existing ABL Loan Agreement, Cortland, in its capacity as collateral agent under the DIP Term Loan Credit Agreement and as collateral agent under the Existing Term Loan Agreement (as defined in the DIP Intercreditor Agreement) and Cortland, in its capacity as Specified Mexico Collateral Agent (as defined in the DIP Intercreditor Agreement). The DIP Intercreditor Agreement governs the relative priorities (and certain other rights) of the lenders under the Existing ABL Loan Agreement, the Existing Term Loan Agreement and the DIP Credit Agreements.

The DIP Intercreditor Agreement is subject to final approval by the Bankruptcy Court, which has not been obtained at this time. The foregoing description of the DIP Intercreditor Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the DIP Intercreditor Agreement, which is filed as Exhibit 4.3 to this Current Report on Form 8-K and incorporated herein by reference.

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

The information set forth above in Item 1.01 under “*DIP Term Loan Credit Facility*” and “*DIP ABL Credit Facility*” is hereby incorporated into this Item 2.03 by reference.

Cautionary Note on Forward-Looking Statements

This Current Report on Form 8-K includes forward-looking statements as defined in Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements reflect only the Company's best assessment at this time and are indicated by words or phrases such as "goal," "plan," "expects," "believes," "will," "estimates," "anticipates," or similar phrases. These forward-looking statements include all matters that are not historical facts. They include statements regarding, among other things, the Company's intentions, beliefs or current expectations concerning the delisting of the Company's common stock on the NYSE American and the transition to the OTC Pink marketplace. By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. Investors are cautioned that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and the development of the industry in which we operate, may differ materially from these statements. Investors should not place undue reliance on such statements. Important factors potentially affecting performance include but are not limited to risks and uncertainties related to the ability to confirm and consummate a plan of reorganization; risks attendant to the bankruptcy process, including our ability to obtain court approvals with respect to motions filed in the Chapter 11 Cases, the outcomes of court rulings and the Chapter 11 Cases in general and the length of time that we may be required to operate in bankruptcy; the effectiveness of the overall restructuring activities pursuant to the Chapter 11 Cases and any additional strategies that we may employ to address our liquidity and capital resources; the actions and decisions of creditors, regulators and other third parties that have an interest in the Chapter 11 Cases, which may interfere with the ability to confirm and consummate a plan of reorganization; restrictions on us due to the terms of the DIP Credit Agreements and restrictions imposed by the applicable courts; potential delays in the Chapter 11 Cases due to the effects of COVID-19; the effects of the Chapter 11 Cases on the Company and on the interests of various constituents, including holders of the Company's common stock; other litigation and inherent risks involved in a bankruptcy process; the impact of COVID-19 on the global economy, our associates, our customers and our operations, our high level of indebtedness and the availability and cost of credit; high interest rates that increase the Company's borrowing costs or volatility in the financial markets that could constrain liquidity and credit availability; the inability to achieve savings and profit improvements at targeted levels in the Company's operations or within the intended time periods; increased competition from foreign suppliers endeavoring to sell glass tableware, ceramic dinnerware and metalware in our core markets; global economic conditions and the related impact on consumer spending levels; major slowdowns or changes in trends in the retail, travel, restaurant and bar or entertainment industries, and in the retail and foodservice channels of distribution generally, that impact demand for our products; inability to meet the demand for new products; material restructuring charges related to involuntary employee terminations, facility sales or closures, or other various restructuring activities; significant increases in per-unit costs for natural gas, electricity, freight, corrugated packaging, and other purchased materials; our ability to borrow under our ABL credit agreement; protracted work stoppages related to collective bargaining agreements; increased pension expense associated with lower returns on pension investments and increased pension obligations; increased tax expense resulting from changes to tax laws, regulations and evolving interpretations thereof; devaluations and other major currency fluctuations relative to the U.S. dollar and the euro that could reduce the cost competitiveness of the Company's products compared to foreign competition; the effect of exchange rate changes to the value of the euro, the Mexican peso, the Chinese renminbi and the Canadian dollar and the earnings and cash flows of our international operations, expressed under U.S. GAAP; the effect of high levels of inflation in countries in which we operate or sell our products; the failure of our investments in e-commerce, new technology and other capital expenditures to yield expected returns; failure to prevent unauthorized access, security breaches and cyber-attacks to our information technology systems; compliance with, or the failure to comply with, legal requirements relating to health, safety and environmental protection; our failure to protect our intellectual property; and the inability to effectively integrate future business we acquire or joint ventures into which we enter. These and other risk factors that could cause results to differ materially from the forward-looking statements can be found in the Company's Annual Report on Form 10-K and in the Company's other filings with the U.S. Securities and Exchange Commission (the "SEC"). Refer to the Company's most recent SEC filings for any updates concerning these and other risks and uncertainties that may affect the Company's operations and performance. Any forward-looking statements speak only as of the date of this Current Report on Form 8-K, and the Company assumes no obligation to update or revise any forward-looking statement to reflect events or circumstances arising after the date of this report.

Item 9.01 Financial Statements and Exhibits

d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
4.1	DIP Term Loan Credit Agreement, dated June 3, 2020
4.2	DIP ABL Credit Agreement, dated June 3, 2020
4.3	DIP Intercreditor Agreement, dated June 3, 2020

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.

Libbey Inc.
Registrant

Date: June 9, 2020

By: /s/ Juan Amezquita
Juan Amezquita
Senior Vice President, Chief Financial Officer and
Treasurer

SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of June 3, 2020

among

LIBBEY GLASS INC.,
a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,
as Borrower,

LIBBEY INC.,
a Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code,
as Holdings,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

and

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent

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Exhibits:

- Exhibit A - Form of Committed Loan Notice
- Exhibit B - Form of Note
- Exhibit C - Form of Assignment and Assumption
- Exhibit D - Closing Checklist
- Exhibit E - [Reserved]
- Exhibit F - [Reserved]
- Exhibit G-1 - Form of Non-Bank Tax Certificate
- Exhibit G-2 - Form of Non-Bank Tax Certificate
- Exhibit G-3 - Form of Non-Bank Tax Certificate
- Exhibit G-4 - Form of Non-Bank Tax Certificate
- Exhibit H - Form of Compliance Certificate
- Exhibit I - Form of Interim Order
- Exhibit J - Form of Funding Account Withdrawal Notice

SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) is entered into as of June 3, 2020, among LIBBEY GLASS INC., a Delaware corporation and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (the “Borrower”), LIBBEY INC., a Delaware corporation and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (“Holdings”), the Debtor Subsidiary Guarantors (as defined below), each, a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, the Foreign Subsidiary Guarantors (as defined below), Cortland Capital Market Services LLC (“Cortland”), as Administrative Agent and Collateral Agent, and each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”).

PRELIMINARY STATEMENTS

WHEREAS, on June 1, 2020 (the “Petition Date”), the Borrower, Holdings, and the Debtor Subsidiary Guarantors (each a “Debtor” and collectively, the “Debtors”) filed voluntary petitions with the Bankruptcy Court commencing their respective cases that are pending under Chapter 11 of the Bankruptcy Code (each case of the Borrower and each other Debtor, a “Case” and collectively, the “Cases”) and have continued in the possession of their assets and management of their business pursuant to Section 1107(a) and 1108 of the Bankruptcy Code (as this and other capitalized terms used in these preliminary statements are defined in Section 1.01 below).

WHEREAS, the Borrower has requested that the Lenders extend credit to the Borrower in the form of new money term loans in an aggregate principal amount of up to \$60,000,000 and in the form of roll-up loans in respect of the loans outstanding under the Pre-Petition Term Loan Credit Agreement (as defined below) in an aggregate principal amount equal to the aggregate principal amount of new money term loans funded hereunder pursuant to this Agreement (collectively, the “DIP Term Facility”), with all of the Borrower’s obligations under the DIP Term Facility to be guaranteed by each Guarantor.

WHEREAS, the priority of the DIP Term Facility with respect to the Collateral granted to secure the Loan Obligations shall be as set forth in the Interim Order and the Final Order, as applicable, in each case upon entry thereof by the Bankruptcy Court.

WHEREAS, the Borrower and the Guarantors are engaged in related businesses, and each Guarantor will derive substantial direct and indirect benefit from the making of the extensions of credit under this Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below. Unless otherwise defined herein, all terms defined in the UCC and used but not defined in this Agreement have the meanings specified in the UCC:

“ABL Obligations” means, collectively, the DIP ABL Obligations and any Pre-Petition ABL Obligations that have not become DIP ABL Obligations through the DIP ABL Roll-Up and any remaining Pre-Petition ABL Obligations after giving effect to the DIP ABL Roll-Up.

“ABL Priority Collateral” has the meaning set forth in the Intercreditor Agreement.

“Acceptable Confirmation Order” means an order of the Bankruptcy Court confirming an Acceptable Plan, in form and substance satisfactory to the Required Lenders and the Administrative Agent in their sole discretion (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Required Lenders in their sole discretion).

“Acceptable Disclosure Statement” means the disclosure statement relating to the Acceptable Plan, in form and substance satisfactory to the Required Lenders in their reasonable discretion (as the same may be amended, supplemented, or modified from time to time after the initial filing thereof with the consent of the Required Lenders in their sole discretion).

“Acceptable Disclosure Statement Order” means an order of the Bankruptcy Court approving the Acceptable Disclosure Statement, in form and substance satisfactory to the Required Lenders in their sole discretion (as the same may be amended, supplemented, or modified from time to time after entry thereof so long as such amendment, supplement, or modification is satisfactory to the Required Lenders in their sole discretion).

“Acceptable Plan” means a plan of reorganization for each of the Cases, in form and substance acceptable to the Required Lenders and the Administrative Agent, that, among other things, (i) provides for the termination of the Commitments and the indefeasible payment in full and full discharge of the Loan Obligations (other than contingent indemnification obligations not yet due) upon the effective date of such plan of reorganization, (ii) provides that the effective date of such plan shall occur by a date that is within the applicable Milestones, and (iii) provides for releases and other exculpatory provisions for the Administrative Agent, the Collateral Agent, the Lenders and the agents and lenders under the Pre-Petition Term Loan Credit Agreement and their respective Related Parties in form and substance satisfactory to the Required Lenders and the Required Lenders (as defined in the Pre-Petition Term Loan Credit Agreement).

“Adequate Protection” has the meaning set forth in the Interim Order or Final Order, as applicable.

“Additional Roll-Up Loans” has the meaning specified in Section 2.01(b).

“Additional Roll-Up Schedules” has the meaning specified in Section 2.01(b).

“Administrative Agent” means Cortland, in its capacity as administrative agent under this Agreement and the other Loan Documents, and its successors in such capacity as provided in Article IX.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent or another form reasonably acceptable to the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, **“control”** when used with respect to any Person means the possession, directly or indirectly, of the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; **provided** that exclusively for purposes of **Section 7.08**, beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control. For purpose of this definition, terms **“controlling”** and **“controlled”** have meanings correlative to the foregoing.

“Affiliate Transaction” has the meaning specified in **Section 7.08(a)**.

“Affiliated Recipient” means any Affiliate of any Netherlands Loan Guarantor or other Loan Party resident in the Netherlands for tax purposes (disregarding for such purpose the proviso to the definition of “Affiliate”).

“Agent Fee Letter” means the Fee Letter, dated as of the Closing Date, between Cortland, as Administrative Agent and Collateral Agent, and the Borrower.

“Agent Parties” has the meaning specified in **Section 10.02(c)**.

“Agents” means, collectively, the Administrative Agent and the Collateral Agent.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Ankura” means Ankura Consulting Group, LLC.

“Anti-Terrorism Laws” has the meaning specified in **Section 5.19(a)**.

“Applicable Rate” means, (a) with respect to the New Money DIP Loans, a percentage per annum equal to: (i) for Eurocurrency Rate Loans, 11.00% and (ii) for Base Rate Loans, 10.00% and (b) with respect to the Roll-Up Loans, a percentage per annum equal to: (i) for Eurocurrency Rate Loans, 1.00% and (ii) for Base Rate Loans, 0.00%.

“Approved Budget” means the Initial Budget or then most current Budget prepared by the Borrower and approved by the Required DIP Lender Group pursuant to Section 6.01, as applicable.

“Approved Fund” means any Fund that is administered, advised or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

“Asset Disposition” means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases, transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors’ qualifying shares), of any property or other assets (including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division) (each referred to for the purposes of this definition as a “disposition”) by the Borrower or any of its Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction.

“Asset Sale” means any Asset Disposition other than Asset Dispositions made in reliance on Section 7.04(b)(i), (ii), (iii), (iv), (v) and (vi).

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an Assignment and Assumption substantially in the form of Exhibit C or such other form approved by the Administrative Agent.

“Attributable Indebtedness” in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for net rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended), determined in accordance with GAAP; provided, however, that if such Sale/Leaseback Transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of “Capitalized Lease Obligations.”

“Avoidance Action” means any and all claims and causes of action of any Debtor’s estate arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, together with all proceeds therefrom.

“Avoidance Proceeds” means any proceeds or property recovered, unencumbered or otherwise arising in connection with successful Avoidance Actions, whether by judgment, settlement or otherwise.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, now and hereafter in effect, or any applicable successor statute.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware, or any appellate court having jurisdiction over the Cases from time to time.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Cases, including any local rules of the Bankruptcy Court.

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Federal Funds Rate in effect on such day plus 1/2 of 1%, (b) the Prime Rate in effect for such day and (c) the Eurocurrency Rate for a one-month Interest Period plus 1.00%; provided that for the avoidance of doubt, the Eurocurrency Rate for any day shall be based on the rate determined on such day at approximately 11:00 a.m. (London time) by reference to the ICE Benchmark Administration LTD (or the successor thereto if the ICE Benchmark Administration LTD is no longer making such rate available), as an authorized vendor for the purpose of displaying such rate(s) on such day; it being understood that, for the avoidance of doubt, the Base Rate shall be deemed to be not less than 2.00% per annum. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Rate for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Base Rate shall be determined without regard to clause (a) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Eurocurrency Rate shall be effective on the effective date of such change in the Prime Rate, the Federal Funds Rate or the Eurocurrency Rate, as the case may be.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Board of Directors” means, as to any Person, the board of directors or managers, as applicable, of such Person or any duly authorized committee thereof.

“Board of Governors” means the Board of Governors of the United States Federal Reserve System.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing (or deemed borrowing) consisting of simultaneous Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Borrowing Base Certificate” means a Borrowing Base Certificate as defined in the DIP ABL Credit Agreement.

“Budget” means a rolling 13-week cash flow forecast delivered on or prior to the Closing Date and on each four week anniversary of the Closing Date thereafter, setting forth all forecasted receipts and disbursements of the Debtors and their Subsidiaries on a weekly basis during such 13-week period which shall include, among other things, available cash, revenue, cash flow, trade payables and ordinary course expenses, total expenses and capital expenditures, fees and expenses relating to the DIP Term Facility, vendor disbursements, liquidity, borrowing availability under the DIP ABL Credit Agreement, net operating cash flow and net cash flow, fees and expenses related to the Cases (including, for the avoidance of doubt, professional fees), working capital and other general corporate financial needs, (i) initially, covering the period commencing on or about the Petition Date and (ii) thereafter, covering the period commencing on the first day of each four-week anniversary or the Closing Date or the prior forecast, as applicable.

“Budget Variance Report” means a weekly variance report provided by the Borrower to the Administrative Agent (i) showing, in each case, by line item the actual cash receipts and disbursements for the immediately preceding week, noting therein all variances, on a line-item and aggregate basis, from the amounts set forth for such period in the Budget, and shall include explanations for all material variances, and (ii) certified by a Responsible Officer of the Borrower. The Budget Variance Report shall be in a form reasonably satisfactory to the Required Lenders, and shall contain supporting information reasonably requested by the Administrative Agent (acting at the direction of the Required Lenders) and reasonably satisfactory to the Required Lenders.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York, and if such day relates to any interest rate settings as to a Loan, any fundings, disbursements, settlements and payments in respect of any such Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Loan, “Business Day” means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock and limited liability or partnership interests (whether general or limited), but excluding any debt securities convertible into such equity.

“Capitalized Lease Obligation” means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty; provided, however, that any Obligations relating to a lease that would have been accounted for by the Borrower or a Subsidiary as an operating lease in accordance with GAAP as of December 31, 2018 shall be accounted for as an operating lease and not a Capitalized Lease Obligation for all purposes under this Agreement.

“Carve-Out” has the meaning specified in the Interim Order or the Final Order, as applicable.

“Carve-Out Trigger Date” has the meaning specified in the Interim Order or the Final Order, as applicable.

“Carve-Out Trigger Notice” has the meaning specified in the Interim Order or the Final Order, as applicable.

“Case” and “Cases” has the meaning specified in the Preliminary Statements.

“Cash Collateral” has the meaning specified in the Interim Order or the Final Order, as applicable.

“Cash Collateral Account” means a blocked account at a commercial bank specified by the Administrative Agent in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“Cash Equivalents” means:

- (1) Dollars, or in the case of the Borrower or any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;
- (2) securities issued or directly and fully guaranteed or insured by the U.S. Government or any agency or instrumentality of the United States (provided that the full faith and credit of the U.S. Government is pledged in support thereof), having maturities of not more than one year from the date of acquisition;
- (3) marketable general obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition of the United States (provided that the full faith and credit of the United States is pledged in support thereof) and, at the time of acquisition, having a credit rating of “A” or better from either S&P or Moody’s;
- (4) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers’ acceptances having maturities of not more than one year from the date of acquisition thereof issued by any commercial bank having combined capital and surplus in excess of \$500.0 million;
- (5) repurchase obligations with a term of not more than thirty days for underlying securities of the types described in clauses (2), (3) and (4), entered into with any bank meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at the time of acquisition thereof at least “A-2” or the equivalent thereof by S&P or “P-2” or the equivalent thereof by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof;

(7) solely with respect to any Subsidiary that is a Foreign Subsidiary, investments of comparable tenor and credit quality to those described in clauses (1) through (6) above customarily utilized in countries in which such Foreign Subsidiary operates for short term cash management purposes; and

(8) interests in any investment company or money market fund that invests 95% or more of its assets in instruments of the type specified in clauses (1) through (7) above.

“Casualty” means any casualty, loss, damage, destruction or other similar loss with respect to real or personal property or improvements.

“CBAs” has the meaning specified in Section 6.24.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty; (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (iii) the compliance by any Lender with any written request, guideline or directive (whether or not having the force of law, but if not having force of law, then being one with which the relevant party would customarily comply) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. No. 111-203) and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued and with respect to any Lender claiming increasing costs or charges pursuant to Section 3.01 or 3.04, only to the extent such Lender imposes the same charges on other similarly situated borrowers under comparable facilities.

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

(1) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any “person” or “group” of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that such person or group shall be deemed to have “beneficial ownership” of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Borrower or Holdings (or its successor by merger, consolidation or purchase of all or substantially all of its assets) (for the purposes of this clause, such person or group shall be deemed to beneficially own any Voting Stock of the Borrower or Holdings held by a parent entity, if such person or group “beneficially owns” (as defined above), directly or indirectly, more than 50% of the voting power of the Voting Stock of such parent entity); or

(2) the 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 assets of Holdings or the Borrower and its Subsidiaries taken as a whole to any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) other than Holdings, the Borrower or any of its Subsidiaries; or

(3) the adoption by the stockholders of the Borrower or Holdings of a plan or proposal for the liquidation or dissolution of the Borrower or Holdings.

“Claim” means all claims, demands, rights, actions, causes of action, liabilities, duties, damages, losses, obligations, diminution in value, judgments, decrees, suits, liens, undertakings, rights to property or information, and controversies of any kind or nature whatsoever, whether absolute or contingent, due or to become due, accrued or unaccrued, disclosed or undisclosed, foreseen or unforeseen, apparent or not apparent, disputed or undisputed, liquidated or unliquidated, at law or in equity, or known or unknown, and whether existing, accrued or arising on, before or after the Petition Date, including all claims arising under state, federal or foreign laws, common law, statutes, rules, regulations or agreements. Without limiting the generality of the foregoing, the term “Claim” shall include the items described in the definition of “Claim” in 11 U.S.C. § 101(5), all claims or causes of action under Chapter 5 of the Bankruptcy Code (including Sections 542, 544, 545, 546, 547, 548, 549 and 550 of the Bankruptcy Code), all claims or causes of action under Sections 105 or 362 of the Bankruptcy Code, all claims or causes of action under any other Debtor Relief Laws, all claims or causes of action arising under the Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act, or Uniform Voidable Transactions Act as in effect in any state, and all rights of contribution, subrogation, exoneration or indemnity.

“Class” (a) when used with respect to any Lender, refers to whether such Lender has a Loan with respect to a particular Class of Loans, and (b) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are New Money DIP Loans or Roll-Up Loans.

“Closing Checklist” means that certain Closing Checklist for the DIP Term Facility attached as Exhibit D hereto.

“Closing Date” means June 3, 2020, the first date on which all conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collateral” means all the “DIP Collateral” (or equivalent term, including “Collateral”) as defined in the Interim Order (and, when entered, the Final Order) or in any Collateral Document and shall include any and all amounts held in the Funding Account and all proceeds thereof. Without limitation of the foregoing, subject to the terms of the Orders, the Intercreditor Agreement and the Carve-Out, the Collateral shall include all proceeds of any and all Avoidance Actions.

“Collateral Agent” means Cortland, in its capacity as collateral agent under this Agreement, the other Loan Documents, the Intercreditor Agreement and the other Collateral Documents, and its successors in such capacity as provided in Article IX.

“Collateral Documents” means, collectively, the US Collateral Documents, the Netherlands Collateral Documents, the Luxembourg Collateral Document, the Portugal Collateral Documents, the Mexico Collateral Documents and the Orders.

“Commitment” means a New Money DIP Commitment. The aggregate amount of the Commitments as of the Closing Date is \$60,000,000, as set forth on Schedule 2.01.

“Commitment Fee” has the meaning specified in Section 2.09.

“Commitment Schedule” means the Schedule attached hereto as Schedule 2.01.

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which shall be in writing in substantially in the form of Exhibit A.

“Commodity Agreement” means any commodity futures contract, commodity option or other similar agreement or arrangement entered into by the Borrower or any Subsidiary designed to protect the Borrower or any of its Subsidiaries against fluctuations in the price of commodities actually used in the ordinary course of business of the Borrower and its Subsidiaries.

“Common Stock” means with respect to any Person, any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person’s common stock whether or not outstanding on the Closing Date, and includes, without limitation, all series and classes of such common stock.

“Communication” has the meaning specified in Section 10.18.

“Compensation Period” has the meaning set forth in Section 2.12(c)(ii).

“Compliance Certificate” means a certificate substantially in the form of Exhibit H.

“Condemnation” means any taking by a Governmental Authority of property or assets, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation or in any other manner.

“Confidential Information” has the meaning specified in Section 10.07.

“Corresponding Liabilities” means all present and future liabilities and contractual and non-contractual obligations of a Loan Party under or in connection with this Agreement and the other Loan Documents, but excluding its Parallel Liability.

“Cortland” has the meaning specified in the introductory paragraph hereto.

“Credit Extension” means a Borrowing.

“Credit Suisse” has the meaning set forth in Section 2.09(c).

“CRO” has the meaning set forth in Section 6.28.

“CS Syndication Commitments” has the meaning set forth in Section 2.09(c).

“Currency Agreement” means in respect of a Person any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement as to which such Person is a party or a beneficiary.

“Debtor” and “Debtors” has the meaning specified in the Preliminary Statements.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, the Dutch Bankruptcy Act (*Faillissementswet*), the Mexican Commercial Insolvency Law (*Ley de Concursos Mercantiles*) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Debtor Subsidiary Guarantor” means each of (i) LGA3 Corp., a Delaware corporation; (ii) LGA4 Corp., a Delaware corporation; (iii) LGAC LLC, a Delaware limited liability company; (iv) LGAU Corp., a Delaware corporation; (v) LGC Corp., a Delaware corporation; (vi) LGFS Inc., a Delaware corporation; (vii) Libbey.com LLC, a Delaware limited liability company; (viii) Syracuse China Company, a Delaware corporation; (ix) The Drummond Glass Company, a Delaware corporation; and (x) World Tableware Inc., a Delaware corporation

“Default” means any event that is, or after notice or the passage of time or both would be, an Event of Default.

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Rate plus (c) 2.0% per annum; provided that with respect to the overdue principal or interest in respect of a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan, *plus* 2.0% per annum, in each case to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means any Lender that (a) has failed (i) to fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Borrower in good faith in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable Default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) to pay to the Administrative Agent, the Collateral Agent or any Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower and the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with the applicable Default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) is, or a direct or indirect parent company of such Lender is, (i) the subject of a Bail-In Action, (ii) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (iii) the subject of a proceeding under any Debtor Relief Laws, or a receiver, trustee, conservator, intervenor or sequestrator or the like (including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in a like capacity with respect to such Lender) has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in such Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent or the Required Lenders that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination by the Administrative Agent or the Required Lenders to the Borrower and each Lender, and, if such determination is made by the Required Lenders, to the Administrative Agent.

“Delaware LLC” shall mean any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware Divided LLC” shall mean any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC Division” shall mean the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Deposit Account Control Agreement” has the meaning assigned to such term in the US Security Agreement (it being agreed that each “Deposit Account Control Agreement” entered into in connection with the Pre-Petition Term Loan Credit Agreement shall be a Deposit Account Control Agreement hereunder)..

“DIP ABL Administrative Agent” means, JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the DIP ABL Facility, together with its successors and permitted assigns in such capacity.

“DIP ABL Credit Agreement” means that certain Debtor-In-Possession Credit Agreement, dated as of the date hereof, among the Borrower, each of the Guarantors, the DIP ABL Administrative Agent and the lenders party thereto from time to time.

“DIP ABL Loan Documents” means the “Loan Documents” as defined in the DIP ABL Credit Agreement.

“DIP ABL Obligations” means the “Secured Obligations” as defined in the DIP ABL Credit Agreement.

“DIP ABL Roll-Up” means the roll-up of certain of the loans and other obligations outstanding under the Pre-Petition ABL Credit Agreement into loans and other obligations outstanding under the DIP ABL Credit Agreement, to the extent provided in the Orders and the DIP ABL Credit Agreement.

“DIP Lender Group” means the Administrative Agent and ad hoc group of Lenders represented by Arnold & Porter Kaye Scholer LLP.

“DIP Term Facility” has the meaning specified in the Preliminary Statements.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 5.06.

“Disqualified Stock” means, with respect to any Person, any Capital Stock of such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(1) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock that is convertible or exchangeable solely at the option of the Borrower or a Subsidiary); or

(3) is redeemable at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the date that is 91 days after the earlier of the date (a) of the Maturity Date or (b) on which there are no Loan Obligations outstanding, provided that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; provided further that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Borrower to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (each defined in a substantially similar manner to the corresponding definitions in this Agreement) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) provided that the Borrower may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) pursuant to such provision prior to compliance by the Borrower with Section 7.02 and Section 7.04 and such repurchase or redemption complies with Section 7.06.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary of Holdings organized under the Laws of the United States, any state thereof or the District of Columbia.

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

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Electronic Copy” has the meaning specified in Section 10.18.

“Electronic Record” has the meaning specified in Section 10.18.

“Electronic Signature” has the meaning specified in Section 10.18.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), (iv) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“Environmental Law” means any applicable federal, state, local, or foreign statute, rule, regulation, order, judgment, directive, decree, permit, license or common law relating to pollution or the protection of the outdoor or indoor environment, natural resources or human health or safety in relation to exposure to Hazardous Materials, including those laws relating to the manufacture, generation, handling, transport, storage, treatment, release or threat of release of Hazardous Materials.

“Environmental Liability” means any liability, obligation, loss, claim, action, suit, order or cost, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Loan Party or any of their respective Subsidiaries arising from, resulting from or based upon (i) actual or alleged violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) exposure to any Hazardous Materials, (iv) the release or threatened release of any Hazardous Materials into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with any Loan Party and is treated as a single employer within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(m) or (o) of the Code.

“ERISA Event” means (i) a Reportable Event with respect to a Pension Plan; (ii) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (iii) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan, notification of any Loan Party or ERISA Affiliate concerning the imposition of Withdrawal Liability or notification that a Multiemployer Plan is insolvent or is in reorganization within the meaning of Title IV of ERISA or, is in endangered or critical status, within the meaning of Section 305 of ERISA; (iv) the receipt by any Loan Party or ERISA Affiliate from the PBGC or plan administrator of a notice of intent to terminate, the treatment of a plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (v) an event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (vi) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; (vii) a determination that any Pension Plan is in “at-risk” status (within the meaning of Section 303(i)(4)(A) of ERISA or Section 430(i)(4)(A) of the Code); (viii) with respect to a Pension Plan, the failure to satisfy the minimum funding standard of Section 412 of the Code and Section 302 of ERISA; or (ix) the failure to make by its due date a required contribution to a Pension Plan under Section 430(j) of the Code or the failure to make a required contribution to a Multiemployer Plan.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

Eurocurrency Rate means, for any Interest Period with respect to any Eurocurrency Rate Loan, the rate per annum determined by the Administrative Agent, at approximately 11:00 a.m. (London time) on the date which is two (2) Business Days prior to the beginning of such Interest Period by reference to the ICE Benchmark Administration LTD (or any successor service or entity that has been authorized by the U.K. Financial Conduct Authority to administer the London Interbank Offered Rate) for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration LTD (or the successor thereto if the ICE Benchmark Administration LTD is no longer making such rate available) as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provision of this definition, the “Eurocurrency Rate” shall be the interest rate per annum, determined by the Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period by major banks in the London interbank market in London, England to the Administrative Agent at approximately 11:00 a.m. (London time) on the date which is two (2) Business Days prior to the beginning of such Interest Period; provided that, notwithstanding anything to the contrary contained in this definition, the Eurocurrency Rate shall be deemed to not be less than 1.00% per annum.

Eurocurrency Rate Loan means a Loan that bears interest at a rate based on the Eurocurrency Rate.

Event of Default has the meaning specified in Section 8.01.

Event of Loss means, with respect to any Collateral, any (1) Casualty of such Collateral, (2) Condemnation or seizure (other than pursuant to foreclosure or confiscation or requisition of the use of such Collateral) or (3) settlement in lieu of clause (2) above, in each case, having a fair market value in excess of \$250,000.

Exchange Act means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereby.

Excluded Taxes means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated, and including (for the avoidance of doubt) any backup withholding in respect thereof under Section 3406 of the Code or any similar provision of state, local or non-U.S. Law), franchise Taxes, and branch profits Taxes, in each case, imposed by a jurisdiction (including any political subdivision thereof) as a result of (A) such Recipient being organized in, having its principal office in, having its permanent establishment or agency in, or in the case of any Lender, having its applicable Lending Office in, such jurisdiction, (B) such Recipient having a substantial interest (*aanmerkelijk belang*) as defined in the Netherlands Income Tax Act 2001 (*Wet inkomenstbelasting 2001*) in a Netherlands Loan Guarantor, or (C) any other present or former connection of such Recipient with the jurisdiction imposing such Taxes (other than any such connection arising solely from this Agreement or any other Loan Documents or any transactions contemplated thereunder), (ii) except in the case of a Recipient that is an assignee pursuant to a request by the Borrower under Section 10.13, any U.S. federal withholding Tax imposed on any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document that is required to be imposed on amounts payable to such Recipient pursuant to Laws in force at the time such Recipient becomes a party hereto (or designates a new Lending Office), or, if such Recipient is an intermediary, partnership or other flow-through entity for U.S. federal income tax purposes, the later date (if any) on which the relevant beneficial owner, partner or member of such Recipient became a beneficial owner, partner or member thereof, except in each case to the extent that (A) such Recipient is an assignee of any other Recipient (or the relevant beneficial owner, partner or member of such Recipient acquired its applicable interest from another beneficial owner, partner or member of such Recipient) that was entitled, immediately prior to such assignment or acquisition, to receive additional amounts from any Loan Party with respect to such withholding Tax pursuant to Section 3.01(a), or (B) such Recipient was entitled, immediately prior to the designation of a new Lending Office, to receive additional amounts from any Loan Party with respect to such withholding Tax pursuant to Section 3.01(a), (iii) any Tax that is attributable to such Recipient’s failure to comply with Section 3.01(e), (iv) any Tax imposed pursuant to FATCA or (v) solely with respect to any Affiliated Recipient, any Tax imposed under the Netherlands Interest and Royalty Withholding Tax Act 2021 (*Wet bronbelasting 2021*).

“Executive Order” has the meaning specified in Section 5.19(a).

“fair market value” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any intergovernmental agreements implementing the foregoing and any applicable Law implementing any such intergovernmental agreement.

“Federal Funds Rate” means, for any day, the rate per annum (expressed, as a decimal, rounded upwards, if necessary, to the next higher 1/100 of 1.00%) equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it as determined by the Administrative Agent.

“Final Order” means an order of the Bankruptcy Court authorizing and approving on a final basis, among other things, the DIP Term Facility and the Transactions contemplated by this Agreement in the form of the Interim Order (with only such modifications thereto as are necessary to convert the Interim Order to a final order and such other modifications as are satisfactory to the Borrower and Required Lenders in their sole discretion) (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Borrower and the Required Lenders in their sole discretion) as to which no stay has been entered.

“Final Order Entry Date” means the date on which the Final Order is entered by the Bankruptcy Court.

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

“Foreign Lender” means any Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“Foreign Plan” means any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by, or entered into with, any Loan Party or any Subsidiary with respect to employees employed outside the United States.

“Foreign Subsidiary” means any Subsidiary that is not organized under the laws of the United States, any state thereof or the District of Columbia.

“Foreign Subsidiary Guarantors” means, collectively, the Mexico Loan Guarantors, the Netherlands Loan Guarantors and the Portugal Loan Guarantor.

“Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“Funding Account” means a non-interest bearing account at KeyBank, N.A. or any other a commercial bank specified by the Administrative Agent in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“Funding Account Withdrawal Notice” has the meaning specified in Section 2.14.

“Funding Authorization Letter” means that certain letter agreement, dated as of the Closing Date, made by the Borrower in favor of the Administrative Agent, pursuant to which, among other things, the Borrower has authorized and directed the Administrative Agent to disburse or otherwise apply the proceeds of the New Money DIP Loans on the Closing Date in accordance with a funds flow memorandum attached to such letter.

“GAAP” means generally accepted accounting principles in the United States of America as 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 and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Agreement will be computed in conformity with GAAP, except that in the event the Borrower is acquired in a transaction in which purchase accounting is applied to the Borrower’s financial statements, the effects of the application of purchase accounting in such instance shall be disregarded in the calculation of such ratios and other computations.

“General Partner” has the meaning provided in the definition of “Indebtedness.”

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central bank).

“Granting Lender” has the meaning specified in Section 10.06(g).

“Grants of Security Interests in Intellectual Property” means, collectively, each Grant of Security Interest in Patent Rights, each Grant of Security Interest in Trademark Rights and each Grant of Security Interest in Copyright Rights to be filed with the United States Patent and Trademark Office (it being agreed that each “Grant of Security Interests in Intellectual Property” entered into in connection with the Pre-Petition Term Loan Credit Agreement shall be a Grant of Security Interests in Intellectual Property hereunder).

“Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

“Guarantor” means each of Holdings and each Subsidiary Guarantor.

“Guarantor Subordinated Obligation” means, with respect to a Guarantor, any Indebtedness of such Guarantor (whether outstanding on the Closing Date or thereafter Incurred) that is expressly subordinated in right of payment to the Obligations of such Guarantor under its Loan Guaranty, pursuant to a written agreement, without giving effect to collateral arrangements.

“Hazardous Materials” means any pollutant, contaminant or hazardous, toxic, medical, biohazardous, or dangerous waste, substance, constituent or material regulated as such pursuant to any applicable Environmental Law, including, without limitation, any asbestos, any petroleum or petroleum products, oil (including crude oil or any fraction thereof), any radioactive substance, any polychlorinated biphenyls, any toxin, chemical, disease-causing agent or pathogen, and any other substance that gives rise to liability under any applicable Environmental Law.

"Hedging Obligations" of any Person means the Obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement.

"Holdings" has the meaning set forth in the introductory paragraph of this Agreement.

"Hong Kong Share Mortgage" means that certain Share Mortgage dated as of the Closing Date between the Borrower, as mortgagor, and Cortland, in its capacities as Administrative Agent and Collateral Agent, as mortgagee, with respect to the issued share capital of Libbey Asia Limited.

"Incur" means issue, create, assume, Guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness or Capital Stock of a Person existing at the time such person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Person at the time it becomes a Subsidiary; and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing.

"Indebtedness" means, with respect to any Person on any date of determination (without duplication):

- (1) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;
- (2) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) the principal component of all obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable or similar obligation to a trade creditor in each case incurred in the ordinary course of business);
- (4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (except trade payables), which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto;
- (5) Capitalized Lease Obligations and all Attributable Indebtedness of such Person;
- (6) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock of the Borrower or a Subsidiary or Preferred Stock of a Subsidiary that is not a Subsidiary Guarantor (but excluding, in each case, any accrued dividends);
- (7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided, however, that the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination and (b) the amount of such Indebtedness of such other Persons;

(8) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person;

(9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time); and

(10) to the extent not otherwise included in this definition, the principal amount of any Indebtedness outstanding in connection with a securitization transaction is the amount of obligations outstanding under the legal documents entered into as part of such securitization that would be characterized as principal on any date of determination if such securitization transaction were structured as a secured lending transaction.

The amount of Indebtedness of any Person at any date will be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date; provided that contingent obligations arising in the ordinary course of business and not with respect of borrowed money shall be deemed not to constitute Indebtedness; provided further that, for the avoidance of doubt, to the extent that prior to the Petition Date, any Mexico Loan Guarantor has agreed with a counterparty to extend the payment terms of accounts payable to such counterparty, any accounts payable to such counterparty shall be deemed not to constitute Indebtedness notwithstanding any change in the accounting treatment of such accounts payable.

In addition, “Indebtedness” of any Person shall include Indebtedness described in the preceding paragraph that would not appear as a liability on the balance sheet of such Person if:

(1) such Indebtedness is the obligation of a partnership or Joint Venture that is not a Subsidiary;

(2) such Person or a Subsidiary of such Person is a general partner of the Joint Venture (a “General Partner”); and

(3) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:

(a) the lesser of (i) the net assets of the General Partner and (ii) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Subsidiary of such Person; or

(b) if less than the amount determined pursuant to clause (a) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount.

“Indemnified Liabilities” has the meaning specified in Section 10.04(b).

“Indemnified Taxes” means all Taxes imposed on or with respect to, or measured by, any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, other than Excluded Taxes or Other Taxes.

“Indemnitee” has the meaning specified in Section 10.04(b).

“Initial Budget” means the Budget delivered on or prior to the Closing Date.

“Initial Roll-Up Date” has the meaning specified in Section 2.01(b).

“Initial Roll-Up Loans” has the meaning specified in Section 2.01(b).

“Initial Roll-Up Schedules” has the meaning specified in Section 2.01(b).

“Insolvency Proceeding” means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (i) the entry of an order for relief under Debtor Relief Laws, or the initiation by any Person of any proceeding or filing under any other insolvency, debtor relief or debt adjustment law; (ii) the appointment of a receiver, interim receiver, trustee, liquidator, administrator, monitor, conservator or other custodian for such Person or any part of its property; or (iii) an assignment or trust mortgage for the benefit of creditors.

“Insolvency Regulation” means the Council Regulation (EC) No. 848/2015 of 20 May 2015 on Insolvency Proceedings.

“Intellectual Property” has the meaning assigned to such term in the US Security Agreement.

“Intercreditor Agreement” means that certain Amended and Restated Intercreditor Agreement dated as of the date hereof, by and among the Pre-Petition ABL Administrative Agent, the Pre-Petition Term Loan Collateral Agent, the DIP ABL Administrative Agent, the Collateral Agent, Holdings, the Borrower, and the Subsidiaries of the Borrower party thereto, as amended, modified or supplemented from time to time in accordance therewith and the terms of this Agreement.

“Interest Payment Date” means, (a) as to any Eurocurrency Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the DIP Term Facility; provided that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date of the DIP Term Facility.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date of the DIP Term Facility.

“Interest Rate Agreement” means with respect to any Person any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.

“Interim Order” means an order of the Bankruptcy Court, in the form set forth in Exhibit I, authorizing on an interim basis, among other things, the DIP Term Facility and the Transactions contemplated by this Agreement, with only such modifications as are satisfactory to the Borrower and the Required Lenders in their sole discretion (as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Required Lenders in their sole discretion) as to which no stay has been entered.

“Interim Order Entry Date” means the date on which the Interim Order is entered by the Bankruptcy Court.

“Investment” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan (other than advances or extensions of credit to customers in the ordinary course of business) or other extensions of credit (including by way of Guarantee or similar arrangement, but excluding any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such Person and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

“IRS” means the United States Internal Revenue Service.

“Joint Venture” means any Person, other than an individual or a Subsidiary of the Borrower, (i) in which the Borrower or a Subsidiary holds or acquires a security interest (whether by way of Capital Stock or otherwise) and (ii) which is engaged in a Related Business.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Lease” means any agreement pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

“Leasehold Property” means, as of any time of determination, any leasehold interest then owned by any Loan Party in any leased real property.

“Lender” means each bank or other lending institution listed on Schedule 2.01, each Eligible Assignee that becomes a Lender pursuant to Section 10.06(b), and their respective permitted successors.

“Lender Advisors” means Arnold & Porter Kaye Scholer LLP and Ankura, as advisors to the DIP Lender Group and the Pre-Petition Lender Group.

“Lender Group” means, collectively, the DIP Lender Group and the Pre-Petition Lender Group.

“Lending Office” means with respect to any Lender, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated in such Lender’s Administrative Questionnaire or in any applicable Assignment and Assumption pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans are to be made and maintained.

“Libbey Mexico” has the meaning set forth in Section 5.10.

“Libbey Mexico Tax Assessment” has the meaning set forth in Section 5.10.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, attachment, charge or security interest in, on or of such asset, including, without limitation, all “liens” as defined by Section 101(37) of the Bankruptcy Code, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Liquidity” means, at any time, the sum of (i) the balance of all Qualified Cash at such time and (ii) Aggregate Availability (as defined in the DIP ABL Credit Agreement) of the Borrower at such time minus \$10,000,000.

“Loan” means a loan made or deemed made by a Lender to the Borrower under Article II, including any New Money DIP Loan and any Roll-Up Loan (and including any PIK Interest that has been added to the outstanding principal amount of such Roll-Up Loan as provided herein).

“Loan Documents” means, collectively, (i) this Agreement, (ii) the Loan Guaranty, (iii) the Intercreditor Agreement, (iv) the Collateral Documents, (v) the Portugal Guarantee, (vi) the Mexico Guarantee, (vii) the Netherlands Intercompany Subordination Agreement, (viii) the Agent Fee Letter and (ix) any other documents guaranteeing the Loan Obligations or any other documents creating a security interest with respect thereto.

“Loan Guarantors” means Holdings and the Subsidiary Guarantors (other than, solely for purposes of Article XI hereof, the Portugal Loan Guarantor).

“Loan Guaranty” means, collectively, (i) the guaranty made by Holdings and the Subsidiary Guarantors (other than the Portugal Loan Guarantor) in favor of the Administrative Agent on behalf of the Senior Credit Parties pursuant to Article XI of this Agreement, (ii) the Portugal Guarantee and (iii) the Mexico Guarantee.

“Loan Obligations” means the Obligations of the Loan Parties under the Loan Documents.

“Loan Parties” means, collectively, (i) the Borrower, (ii) Holdings and (iii) each other Guarantor.

“Luxembourg Collateral Document” means the third ranking deposit account pledge agreement governed by the laws of the Grand Duchy of Luxembourg dated on or about the date hereof between, among others, Libbey Europe B.V. as pledgor and the Collateral Agent.

“Material Adverse Effect” means (i) a material adverse effect on the business, operations, assets, liabilities (actual or contingent) or financial condition of Holdings and its Subsidiaries, taken as a whole, other than, in each case, as a result of the events, facts or circumstances leading up to the commencement of the Cases and the continuation and prosecution thereof, (ii) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which any of the Loan Parties is a party or (iii) a material adverse effect on the rights and remedies of the Lenders or the Agents under any Loan Document. For the avoidance of doubt, solely for purposes of clause (i) hereof, “Material Adverse Effect” shall expressly exclude (a) any matters disclosed in any “first day” pleadings or declarations and (b) the effect of filing the Cases, the events and conditions related to, resulting from and/or leading up thereto and the effects thereon and any action required to be taken under the Loan Documents or the Order.

“Maturity Date” means the earliest of (i) thirty-five (35) days following the Petition Date (or such later date as agreed to by the Required Lenders) if the Final Order shall not have been entered by such date, (ii) the effective date of any Chapter 11 plan for the reorganization of the Borrower or any other Debtor, (iii) the date on which all or substantially all of the assets of the Debtors are sold in a sale under a chapter 11 plan or pursuant to Section 363 of the Bankruptcy Code, (iv) one hundred eighty (180) days following the Petition Date, and (v) the date that all Loans shall become due and payable in full in accordance with the terms of this Agreement, including due to acceleration upon the occurrence of an Event of Default.

“Maximum Liability” has the meaning set forth in Section 11.11.

“Maximum Rate” has the meaning specified in Section 10.09.

“Mexican Subsidiaries” has the meaning specified in Section 6.01(viii).

“Mexico Collateral” means any and all Collateral owned, leased or operated by a Person covered by the Mexico Collateral Documents and any and all other Collateral of any Loan Party that may at any time, pursuant to a Mexico Collateral Document, be or become subject to a security interest or Lien in favor of the Collateral Agent, on behalf of the Senior Credit Parties, to secure the Secured Obligations or any other rights granted to the Administrative Agent, the Collateral Agent and the Lenders in the Orders or any other Loan Document.

“Mexico Collateral Documents” means, collectively, the Mexico Security Agreement and the other security agreements, pledge agreements, agency agreements and other instruments and documents executed and delivered pursuant to this Agreement or any of the foregoing, as the same may be amended, supplemented or otherwise modified from time to time and pursuant to which Mexico Collateral (or equity interests issued by a Mexico Loan Guarantor) is pledged, assigned or granted (or purported to be pledged, assigned or granted) to or on behalf of the Collateral Agent for the ratable benefit of the holders of the Secured Obligations or notice of such pledge, assignment or grant is given.

“Mexico Guarantee” means any Mexico Loan Guarantor’s corporate Guarantee granted under the Mexico Guarantee Agreement.

“Mexico Guarantee Agreement” means the Corporate Guarantee Agreement (*contrato de fianza*) to be granted by the Mexico Loan Guarantor under the Mexico Guarantee Agreement.

“Mexico Loan Guarantors” means the US Borrower’s Subsidiaries that are organized under the laws of Mexico (other than Crisa Libbey, S.A. de C.V.).

“Mexico Security Agreement” means, collectively, the Mexico Security Trust, the Mexico Equity Interest Pledge Agreement and the Mexico Non Possessory Pledge Agreement.

“Mexico Equity Interest Pledge Agreement means, collectively, one or more Mexican law-governed Non-Possessory Equity Pledge Agreements (*Contratos de Prenda sin Transmisión de Posesión sobre Partes Sociales*), in form and substance satisfactory to the Collateral Agent, pursuant to which the Persons holding any Equity Interests issued by the Mexico Loan Guarantors and/or owners of the equity interests of the Mexico Loan Guarantors, as pledgors, have pledged and granted a first priority Lien in favor of the Collateral Agent (or any other designated Person under the Intercreditor Agreement), as pledgee, with the consent and acknowledgement of the corresponding Mexico Loan Guarantor, over all of the present and future assets (*Bienes Pignorados*, as defined therein), except as otherwise transmitted to the Mexico Security Trustee and subject to the Mexico Security Trust Agreement, and given as security for the Secured Obligations and the ABL Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

“Mexico Non Possessory Pledge Agreement” means, collectively, one or more Mexican law-governed Non-Possessory Pledge Agreements (*Contratos de Prenda sin Transmisión de Posesión*) in form and substance satisfactory to the Collateral Agent, pursuant to which the corresponding Loan Guarantors, as pledgors, have pledged and granted a first priority Lien in favor of the Collateral Agent (or any other designated Person under the Intercreditor Agreement), as pledgee, over all or substantially all of the present and future assets (*Bienes Pignorados*, as defined therein), and given as security for the Secured Obligations and the ABL Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Mexico Security Trust" means, one Mexican law-governed Irrevocable Transfer of Title and Security Trust Agreement with Reversion Right (*Contrato de Fideicomiso Irrevocable Traslativo de Dominio y de Garantía con Derechos de Reversión*), in form and substance satisfactory to the Collateral Agent, to be entered into by and among each corresponding Loan Guarantor, as settlors, the Mexico Security Trustee, as trustee, the DIP ABL Administrative Agent and the Collateral Agent (or any other designated Person under the Intercreditor Agreement), as first and second place beneficiaries, respectively, pursuant to which the corresponding settlors, have transferred or will transfer to the Mexico Security Trustee all of the Mexico Collateral identified therein to form part of the trust estate (*Patrimonio del Fideicomiso*, as defined therein), and given as security for the Secured Obligations and the ABL Obligations, except as otherwise covered by the Mexico Non Possessory Pledge Agreement and the Mexico Equity Interest Pledge Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Mexico Security Trustee" means any Mexican banking institution acceptable to the Collateral Agent, acting as trustee under the Mexico Security Trust Agreement.

"Milestone" has the meaning specified in [Section 6.21](#).

"Modified CBAs" has the meaning specified in [Section 6.24](#).

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means, collectively, the deeds of trust, trust deeds, hypothecs and mortgages as the same may be amended, amended and restated, supplemented or otherwise modified from time to time creating and evidencing a Lien on a Mortgaged Property made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Senior Credit Parties in form and substance reasonably satisfactory to the Collateral Agent with such modifications as may be required by local law (including the Mexico Security Trust, with respect to any real property located in Mexico owned by the Mexico Loan Guarantors, any Netherlands Mortgage and any US Mortgage).

"Mortgage Policies" has the meaning specified in [Section 6.16\(b\)](#).

"Mortgaged Property" means the real property listed on [Schedule 1.01\(c\)](#).

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or in the past six years has made or been obligated to make contributions.

“Net Proceeds” means, with respect to any event, (a) the cash (which term, for purposes of this definition, shall include Cash Equivalents) proceeds received in respect of such event, including any cash received in respect of any noncash proceeds, but only as and when received, net of (b) the sum, without duplication, of (i) all reasonable fees and out of pocket expenses (including any underwriting discounts and commissions) paid in connection with such event by the Borrower or any Subsidiary to Persons that are not Affiliates of the Borrower or any Subsidiary, and (ii) in the case of any Asset Sale or Event of Loss, (A) the amount of all payments (including in respect of principal, accrued interest and premiums) required to be made by the Borrower and the Subsidiaries as a result of such event to repay Indebtedness of the Borrower or the Subsidiaries of the types referred to in clauses (1), (2), (4) and (5) of the definition of “Indebtedness” (other than Loan Obligations, Indebtedness pursuant to the Pre-Petition Term Loan Documents, Indebtedness pursuant to the DIP ABL Loan Documents and Indebtedness pursuant to the Pre-Petition ABL Loan Documents) secured by the assets subject thereto, and (B) the amount of all Taxes paid (or reasonably estimated to be payable) by the Borrower or any Subsidiary, and the amount of any reserves established by the Borrower or any Subsidiary in conformity with GAAP to fund purchase price adjustment, indemnification and similar contingent liabilities reasonably estimated to be payable that are directly attributable to the occurrence of such event.

“Netherlands Collateral” means any and all Collateral owned, leased or operated by a Person covered by the Netherlands Collateral Documents and any and all other Collateral of any Loan Party that may at any time, pursuant to a Netherlands Collateral Document, be or become subject to a security interest or Lien in favor of the Collateral Agent, on behalf of the Senior Credit Parties, to secure the Secured Obligations or any other rights granted to the Administrative Agent, the Collateral Agent and the Lenders in the Orders or any other Loan Document.

“Netherlands Collateral Documents” means, collectively, the Netherlands Security Agreements, the Netherlands Mortgages and the other security agreements, pledge agreements, agency agreements and other instruments and documents executed and delivered pursuant to this Agreement or any of the foregoing, as the same may be amended, supplemented or otherwise modified from time to time and pursuant to which Netherlands Collateral (or equity interests issued by a Netherlands Loan Guarantor) is pledged, assigned or granted (or purported to be pledged, assigned or granted) to or on behalf of the Collateral Agent for the ratable benefit of the holders of the Secured Obligations or notice of such pledge, assignment or grant is given.

“Netherlands Fiscal Unity” means any fiscal unity for Dutch corporate income tax or Dutch VAT, consisting of Loan Parties only.

“Netherlands Intercompany Note” means that certain intercompany loan agreement dated April 30, 2011, and amended on April 22, 2016, between Libbey Mexico, as debtor, and Libbey Mexico Holdings B.V., as creditor, which agreement shall be subject in all respects to the terms of the Netherlands Intercompany Subordination Agreement.

“Netherlands Intercompany Pledge” means the non-possessory pledge agreement (*contrato de prenda sin transmisión de posesión*) entered into dated April 22, 2016 by and between Libbey Mexico Holdings B.V. and Libbey México, S. de R.L. de C.V. with respect to certain Equity Interests issued by Crisa Libbey México, S. de R.L. de C.V.

“Netherlands Intercompany Subordination Agreement” means the Subordination Agreement dated June 3, 2020, between the DIP ABL Administrative Agent, the Collateral Agent, Libbey Mexico Holdings B.V. and Libbey México, S. de R.L. de C.V.

“Netherlands Loan Guarantors” means each of the Borrower’s Subsidiaries that are organized under the laws of The Netherlands.

“Netherlands Mortgage” means each Mortgage in respect of owned real property located in the Netherlands of a Netherlands Loan Guarantor.

“Netherlands Security Agreement” means each of that certain Dutch Security Agreement, dated on or about the date hereof, between the Netherlands Loan Guarantors, the Borrower and the Collateral Agent, and any other pledge or security agreement entered into, on or after the date of this Agreement by any Netherlands Loan Guarantor or with respect to the equity interests issued by any of the Netherlands Loan Guarantors (as required by this Agreement or any other Loan Document) as the same has been and may further be amended, restated or otherwise modified from time to time.

“New Money DIP Commitment” means, with respect to each Lender, the commitment of such Lender to make a New Money DIP Loan to the Borrower hereunder in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on the Commitment Schedule under the heading “New Money DIP Commitment”, as such commitment may be (a) reduced from time to time pursuant to Section 2.06 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to an Assignment and Assumption. The aggregate amount of the Lenders’ New Money DIP Commitments on the Closing Date is \$60,000,000.

“New Money DIP Loan” means a Loan made pursuant to Section 2.01(a).

“Non-Bank Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“Non-Paying Guarantor” has the meaning specified in Section 11.12.

“Note” means a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of Exhibit B hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans made by such Lender.

“Obligations” means any principal, interest (including any interest and fees accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), premium, penalties, fees, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and Guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness, Hedging Obligations or cash management and related banking services.

“OFAC” has the meaning specified in Section 5.19(b)(v).

“Orders” means the Interim Order and the Final Order, as applicable, in each case upon entry thereof by the Bankruptcy Court.

“Organization Documents” means: (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization or association and operating or limited liability company agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future stamp or documentary Taxes or any other excise, property, intangible, mortgage recording or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, registration or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document; *provided* that such term shall not include any of the foregoing Taxes that result from an Assignment and Assumption, grant of a participation pursuant to Section 10.06(d) or transfer or assignment to or designation of a new Lending Office (“Assignment Taxes”) to the extent such Assignment Taxes are imposed as a result of a present or former connection between the assignor/participating Lender and/or the assignee/Participant and the taxing jurisdiction (other than a connection arising from any Loan Documents or any transactions contemplated thereunder), except to the extent that any such action described in this proviso is requested or required by a Borrower.

“Outstanding Amount” means, with respect to the Loans, on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

“Parallel Liability” means a Loan Party’s undertaking pursuant to Section 10.22.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Paying Guarantor” has the meaning specified in Section 11.12.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA or Section 412 of the Code and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the past six years.

"Permitted Investment" means an Investment made, held, or permitted to exist by Holdings or any Subsidiary in:

- (1) Capital Stock in their Subsidiaries; provided that (i) such investees are Subsidiaries prior to such Investments, (ii) any such Capital Stock held by a Loan Party shall be pledged in accordance with the Collateral Documents and the Orders and (iii) no new Investment shall be made by a Loan Party in a non-Loan Party following the Closing Date;
- (2) loans or advances made by the Borrower or any Subsidiary to the Borrower or any Subsidiary; provided that, following the Closing Date, no new loans or advances shall be made by (a) a Foreign Subsidiary Guarantor in a non-Loan Party or (b) a Debtor in a non-Debtor;
- (3) cash and Cash Equivalents in accordance with the Approved Budget;
- (4) receivables owing to the Borrower or any Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Borrower or any such Subsidiary may make in the ordinary course of business consistent with the past practices of the Borrower and the Subsidiaries;
- (5) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and in accordance with the Approved Budget;
- (6) Capital Stock, Obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Borrower or any Subsidiary or in satisfaction of judgments or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of a debtor;
- (7) Investments in existence on the Closing Date and listed on Schedule 1.01(d) and any modification, replacement, renewal or extension thereof from time to time; provided that (i) the parties thereto shall remain the same and (ii) the amount of any such Investment thereunder does not increase; *provide further* that there shall not be any additions thereto (including any capital contributions) made after the date hereof;
- (8) payments made by a Debtor to a Foreign Subsidiary for goods or services provided by such Foreign Subsidiary to such Debtor so long as any such transactions between such Foreign Subsidiary and such Debtor are entered into in the ordinary course of business consistent with past practice on a cost plus basis subject to periodic true-up (but, in any event, on pricing terms that are not greater than those in existence on the Closing Date); provided that, on and after the Closing Date, no transfer pricing true-up payments are made by a Debtor to a Foreign Subsidiary;
- (9) Guarantees of Indebtedness permitted under Section 7.03;
- (10) Investments consisting of non-exclusive licensing of intellectual property pursuant to joint marketing arrangements with other Persons in the ordinary course of business and consistent with past practice; and

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

“Permitted Liens” means, with respect to any Person:

(1) Liens securing Indebtedness permitted to be incurred pursuant to Section 7.03(b)(2), including Terminated Swap Obligations (as defined in the DIP ABL Credit Agreement) and Hedging Obligations owing to agents or lenders (or their Affiliates) under the DIP ABL Loan Documents or Pre-Petition ABL Loan Documents and related banking services and cash management Obligations owing to agents or lenders (or their Affiliates) under the DIP ABL Loan Documents or Pre-Petition ABL Loan Documents and Liens on assets of Subsidiaries securing Guarantees of Indebtedness and other Obligations of the Borrower and/or Libbey Europe B.V. under the DIP ABL Loan Documents or Pre-Petition ABL Loan Documents permitted to be incurred pursuant to Section 7.03(b)(2); provided that such Liens are at all times subject to the Intercreditor Agreement and the Orders;

(2) subject to the Orders and the terms thereof, pledges or deposits by such Person under workers’ compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(3) Liens imposed by law, such as carriers’, warehousemen’s and mechanics’ Liens, in each case for sums not yet overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP and Incurred in the ordinary course of business;

(4) Liens for Taxes, assessments or other governmental charges, in each case, arising Post-Petition (i) not yet overdue for a period of more than 30 days or not yet payable or subject to penalties for nonpayment or (ii) that are being contested in good faith by appropriate proceedings diligently conducted for which appropriate reserves required pursuant to GAAP have been made in respect thereof;

(5) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers’ acceptances issued Post-Petition pursuant to the request of and for the account of such Person in the ordinary course of its business;

(6) survey exceptions, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person; provided that the Person complies with the applicable provisions of the Collateral Documents and the Orders relating to such Liens;

- (7) Liens securing Indebtedness permitted to be incurred pursuant to Section 7.03(b)(5);
- (8) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) subject to any lease (other than any capital lease), license, sublease, or sublicense of the Borrower or any of its Subsidiaries permitted by the Loan Documents;
- (9) judgment Liens in respect of judgments after the Petition Date not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (10) Liens for the purpose of securing the payment of all or a part of the purchase price of, or Capitalized Lease Obligations, purchase money obligations or other payments Incurred to finance the acquisition, lease, improvement or construction of, assets or property acquired or constructed in the ordinary course of business; provided that:
- (a) the Incurrence of the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under this Agreement and does not exceed the cost of the assets or property so acquired or constructed; and
 - (b) such Liens are created within 180 days of construction or acquisition of such assets or property and do not encumber any other assets or property of the Borrower or any Subsidiary other than such assets or property and assets affixed or appurtenant thereto;
- (11) Liens arising solely by virtue of any statutory or common law provisions, or on the basis of Dutch general banking conditions (*algemene bankvoorraarden*), relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary institution;
- (12) Liens arising from Uniform Commercial Code financing statement filings filed prior to the Petition Date regarding operating leases entered into by the Borrower and its Subsidiaries in the ordinary course of business;
- (13) Liens existing on the Closing Date and listed on Schedule 1.01(e) hereof;
- (14) any interest or title of a lessor under any Capitalized Lease Obligation or operating lease permitted by this Agreement;
- (15) Liens securing the Loan Obligations;

(16) Liens securing Indebtedness permitted to be incurred pursuant to Section 7.03(b)(5), and Liens on assets of Subsidiaries securing Guarantees of Indebtedness and other Obligations of the Borrower under the Pre-Petition Term Loan Documents permitted to be incurred pursuant to Section 7.03(b)(5); provided that such Liens are at all times subject to the Intercreditor Agreement and the Orders;

(17) Liens created pursuant to the Orders;

(18) any joint and several liability (*hoofdelijke aansprakelijkheid*) pursuant to Sections 24, 39 and 43 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) as a result of any Loan Party being or becoming a member of the Netherlands Fiscal Unity; and

(a) Liens on the Equity Interests of Crisa Libbey México, S. de R.L. de C.V. granted by Libbey Mexico in favor of Libbey Mexico Holdings B.V. in accordance with the terms of the Netherlands Intercompany Pledge as in effect on the date hereof, and subject in all respects to the Netherlands Subordination Agreement.

“Permitted Variances” shall mean (i) all variances that are favorable to the financial condition and the interests of the Debtors and the other Loan Parties and the interests of the Lenders, and (ii) any variance that is unfavorable to the financial condition and the interests of the Debtors and the other Loan Parties or the interests of the Lenders and does not exceed, (x) with respect to disbursements (excluding fees, costs and expenses of professional advisors), 10%, tested every week on a cumulative basis for a rolling four week period (or, solely for each of the first three weeks of the Cases, tested every week on a cumulative basis for the period from the Petition Date through such Testing Date), (y) with respect to both (a) accrued fees, costs and expenses of professional advisors and (b) the payment of fees, costs and expenses of professional advisors, 15%, tested every fourth week, on a cumulative basis for the rolling four week period, and (z) with respect to net cash flow (excluding fees, costs and expenses of professional advisors), 20%, tested every fourth week, on a cumulative basis for the rolling four week period, in each case, based upon the most recent Approved Budget, and as reflected in the Budget Variance Report.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

“Petition Date” has the meaning specified in the Preliminary Statements.

“PIK Rate” means a rate per annum equal to 2.00%.

“Platform” has the meaning specified in Section 6.02.

“Portugal Collateral” means any and all Collateral owned, leased or operated by a Person covered by the Portugal Collateral Documents (including credit rights) and any and all other Collateral (including credit rights) of any Loan Party that may at any time, pursuant to a Portugal Collateral Document, be or become subject to a security interest or Lien in favor of the Collateral Agent, acting for itself and on behalf and for the benefit of the remaining Senior Credit Parties, to secure the Secured Obligations on the terms and conditions, and as, set forth in the Portugal Security Agreement or any other rights granted to the Administrative Agent, the Collateral Agent and the Lenders in the Orders or any other Loan Document.

“Portugal Collateral Documents” means, collectively, the Portugal Security Agreement and the other security agreements, including the Portugal Mortgage Deed, pledge agreements, agency agreements and other instruments and documents executed and delivered pursuant to this Agreement or any of the foregoing, governed by Portuguese Law as the same may be amended, supplemented or otherwise modified from time to time and pursuant to which Portugal Collateral (or equity interests issued by a Portugal Loan Guarantor) is pledged, assigned or granted (or purported to be pledged, assigned or granted) to or on behalf of the Collateral Agent acting for itself and on behalf and for the benefit of the remaining Senior Credit Parties for the ratable benefit of the holders of the Secured Obligations or notice of such pledge, assignment or grant is given. Any security interests granted by a Portugal Loan Guarantor incorporated or established under the laws of Portugal shall be preserved and shall not be released, discharged, extinguished or in any way impaired, prejudiced or jeopardized neither (i) by the amendment, alteration or novation of the Loan Obligations nor (ii) by the transfer, whether by assignment, novation or otherwise of the Loan Obligations, all carried out in accordance with the Loan Documents.

“Portugal Guarantee” means any Portugal Loan Guarantor’s corporate Guarantee governed by Portuguese Law and granted under the Portugal Security Agreement.

“Portugal Loan Guarantor” means the Borrower’s Subsidiary that is organized under the laws of Portugal and party to the Portugal Security Agreement.

“Portugal Mortgage Deed” means the mortgage notarial deed over the factory (*hipoteca de fábrica*) owned by the Portugal Loan Guarantor governed by Portuguese law to be granted before a Portuguese Notary following the Closing Date pursuant to Section 6.18.

“Portugal Security Agreement” means the security agreement governed by Portuguese law to be executed before a Portuguese Notary following the Closing Date pursuant to Section 6.18 by and between the Collateral Agent, the Portugal Loan Guarantor, Libbey Europe B.V. and any other Loan Parties that may be party thereto.

“Post Carve-Out Cap” has the meaning specified in the Interim Order or the Final Order, as applicable.

“Post-Petition” means the time period commencing immediately upon the filing of the Cases.

“Preferred Stock” as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) that is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“Prepayment Event” means (a) any Asset Sale, (b) any Event of Loss, or (c) the incurrence by the Borrower or any Subsidiary of any Indebtedness, other than Indebtedness permitted by Section 7.03.

“Pre-Petition ABL Administrative Agent” means, in the case of the Borrower and the US Loans (as defined in the Pre-Petition ABL Credit Agreement), JPMorgan Chase Bank, N.A., and in the case of the Netherlands Borrower and the Netherlands Loans (as each are defined in the Pre-Petition ABL Credit Agreement), J.P. Morgan Europe Limited, each in its capacity as administrative agent for the Lenders thereunder.

“Pre-Petition ABL Credit Agreement” means that certain Amended and Restated Credit Agreement, dated as of February 8, 2010 (as amended, amended and restated or otherwise modified prior to or on the Closing Date), among the Borrower, Libbey Europe B.V., a Netherlands corporation, the other Subsidiaries of Holdings party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent with respect to the US Loans, J.P. Morgan Europe Limited, as Administrative Agent with respect to the Netherlands Loans, the other titled agents party thereto and the lenders party thereto from time to time.

“Pre-Petition ABL Loan Documents” means the “Loan Documents” as defined in the Pre-Petition ABL Credit Agreement.

“Pre-Petition ABL Obligations” means the “Secured Obligations” as defined in the Pre-Petition ABL Credit Agreement.

“Pre-Petition Lender Group” means the Pre-Petition Term Loan Administrative Agent and the ad hoc group of Lenders (as defined in the Pre-Petition Term Loan Credit Agreement) represented by Arnold & Porter Kaye Scholer LLP.

“Pre-Petition Term Loan Administrative Agent” means Cortland, in its capacity as administrative agent under the Pre-Petition Term Loan Documents.

“Pre-Petition Term Loan Collateral Agent” means Cortland, in its capacity as collateral agent under the Pre-Petition Term Loan Documents.

“Pre-Petition Term Loan Credit Agreement” means that certain Credit Agreement, dated as of April 9, 2014 (as amended, amended and restated or otherwise modified prior to or on the Closing Date), among the Borrower, Holdings, the other Subsidiaries of Holdings party thereto, the Pre-Petition Term Loan Administrative Agent (as successor to Citibank, N.A., in its capacities as administrative agent and collateral agent), and the lenders party thereto from time to time.

“Pre-Petition Term Loan Documents” means the “Loan Documents” as defined in the Pre-Petition Term Loan Credit Agreement.

“Prime Rate” means, for any day, the prime rate published in The Wall Street Journal for such day; provided that if The Wall Street Journal ceases to publish for any reason such rate of interest, “Prime Rate” shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the Administrative Agent from time to time for purposes of providing quotations of prime lending interest rates).

“Pro Rata Share” means, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the sum of the Outstanding Amount of the Loans of such Lender and the aggregate unused Commitments of such Lender at such time and the denominator of which is the sum of the Outstanding Amount of all Loans and the aggregate unused Commitments of all Lenders at such time.

“Process Agent” means Libbey Glass Inc. or such other Person acceptable to the Administrative Agent to act as agent for service of process for the purposes set forth in this Agreement.

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

“Public Lender” has the meaning specified in Section 6.02.

“Qualified Cash” means, as of any date of determination, the amount of unrestricted (other than restrictions imposed pursuant to the Loan Documents) cash and Cash Equivalents of the Borrower and the other Loan Parties that is in a deposit account or in a securities account, or any combination thereof, and which deposit account and securities account and all cash and Cash Equivalents therein are (i) subject to a perfected security interest in favor of the Collateral Agent prior to all other Liens (other than Liens securing the ABL Obligations) and (ii) located within the United States. For the avoidance of doubt, Qualified Cash shall not include any cash in the Funding Account.

“Real Property” means a Loan Party’s interest in all Leases and all land, tenements, hereditaments and any estate or interest therein, together with the buildings, structures, parking areas and other improvements thereon (including all fixtures), now or hereafter owned or leased by any Loan Party, together with all easements, rights-of-way, and similar rights relating thereto and all leases, licenses tenancies and occupancies thereof.

“Recipient” means any Agent or any Lender, as applicable.

“Register” has the meaning specified in Section 10.06(c).

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

“Regulation U” shall mean Regulation U, T or X as promulgated by the Board of Governors of the Federal Reserve System, as amended from time to time.

“Related Business” means any business that is the same as or related, ancillary or complementary to any of the businesses of the Borrower and its Subsidiaries, on the Petition Date.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates, and the respective officers, directors, partners, members, equityholders, investors, fiduciaries, trustees, controlling persons, administrators, managers, employees, agents, advisors, attorneys, representatives and attorneys-in-fact of such Person and its Affiliates.

“Remedies Notice Period” has the meaning specified in Section 8.02.

“Reportable Event” means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the 30-day notice period has been waived.

“Request for Credit Extension” means with respect to a Borrowing, continuation or conversion of Loans, a Committed Loan Notice.

“Required Class Lenders” means, with respect to any Class on any date of determination, Lenders having more than 50% of the sum of (i) the outstanding Loans under such Class and (ii) the aggregate unused Commitments (if any) under such Facility.

“Required DIP Lender Group” means, as of any date of determination, the Lenders in the DIP Lender Group holding more than 50.0% of the sum of (a) the Outstanding Amount of the Loans that are held by the DIP Lender Group and (b) the aggregate unused Commitments that are held by the DIP Lender Group as of such date. For purposes of this definition, the Outstanding Amount of the Loans and the aggregate unused Commitments shall be determined by excluding the sum of the Outstanding Amount of the Loans of each Defaulting Lender and the aggregate unused Commitments of each Defaulting Lender at such time.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50.0% of the sum of (a) the Outstanding Amount of the Loans and (b) the aggregate unused Commitments as of such date. For purposes of this definition, the Outstanding Amount of the Loans and the aggregate unused Commitments shall be determined by excluding the sum of the Outstanding Amount of the Loans of each Defaulting Lender and the aggregate unused Commitments of each Defaulting Lender at such time.

“Required Roll-Up Lenders” means, as of any date of determination, Lenders holding more than 50.0% of the sum of the aggregate principal amount of the Roll-Up Loans as of such date.

“Requirement of Law” means, as to any Person, the Organization Documents of such Person, and any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or to which any of its material property is subject.

“Responsible Officer” means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, the Assistant Treasurer, the Secretary or the Assistant Secretary of a Loan Party or, if such Loan Party is a partnership or a limited liability company or Foreign Subsidiary that has no such officers, a person duly authorized under applicable law by the general partner, managers, members or a similar body to act on behalf of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

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

“Restricted Payments” has the meaning specified in Section 7.06(a).

“Roll-Up Lenders” means the financial institutions listed on the Initial Roll-Up Schedule and/or the Additional Roll-Up Schedule.

“Roll-Up Loans” has the meaning specified in Section 2.01(b).

“Roll-Up Schedules” has the meaning specified in Section 2.01(b).

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

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale/Leaseback Transaction” means an arrangement relating to property now owned or hereafter acquired whereby the Borrower or a Subsidiary transfers such property to a Person (other than the Borrower or any of its Subsidiaries) and the Borrower or a Subsidiary leases it from such Person.

“Same Day Funds” means immediately available funds.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Obligations” has the meaning set forth in the US Security Agreement and includes the Loan Obligations.

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

“Selected CBAs” has the meaning specified in Section 6.24.

“Senior Credit Party” means each Lender, the Administrative Agent, the Collateral Agent, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05 and designated by the Administrative Agent as a “Senior Credit Party”, and each Indemnitee and the respective successors and assigns of any of the foregoing, and “Senior Credit Parties” means any two or more of them, collectively.

“Solvent” mean, with respect to each Loan Party, at any time that (i) the fair value of the assets of such Loan Party, at a fair valuation, at such time exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of such Loan Party at such time are greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) such Loan Party at such time is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) such Loan Party at such time does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is then conducted and is proposed to be conducted thereafter.

“SPC” has the meaning specified in Section 10.06(g).

“Stated Maturity” means, with respect to any Indebtedness, the date specified in the agreement governing or certificate relating to such Indebtedness as the fixed date on which the final payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Submitted Proposals” has the meaning specified in Section 6.24.

“Subordinated Obligation” means any Indebtedness of the Borrower (whether outstanding on the Closing Date or thereafter Incurred) that is subordinated or junior in right of payment to the Loans pursuant to a written agreement, without giving effect to collateral arrangements.

“Subsidiary” of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or persons performing similar functions) or (b) any partnership, joint venture limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Borrower.

“Subsidiary Guarantor” means each US Loan Guarantor (other than Holdings), each Mexico Loan Guarantor, each Netherlands Loan Guarantor, and the Portugal Loan Guarantor.

“Superpriority Claim” means any administrative expense claim in the case of any Loan Party having priority over any and all administrative expenses, diminution claims and all other priority claims against the Debtors, subject only to the Carve-Out, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject only to and effective upon entry of the Final Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code.

“Syndication Fee” has the meaning set forth in Section 2.09(c).

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

“Term Priority Collateral” has the meaning assigned to the term “Term Priority Collateral” in the Intercreditor Agreement.

“Testing Date” shall mean (x) with respect to the testing of Permitted Variances under clause (ii)(x) of the definition thereof, the last Business Day of (i) the first full calendar week after the Closing Date and (ii) every week thereafter (each such date under this clause (x), a “Disbursements Testing Date”) and (y) with respect to the testing of Permitted Variances under subclauses (y) and (z) of clause (ii) of the definition thereof, the last Business Day of (i) the fourth full calendar week after the Closing Date and (ii) every fourth week thereafter (each such date under this clause (y), a “Professional Fees and Net Cash Flow Testing Date”).

“Testing Period” shall mean (a) in the case of any Disbursements Testing Date (as defined in the definition of Testing Date), the one week period ending on such Disbursements Testing Date, and (b) in the case of any Professional Fees and Net Cash Flow Testing Date (as defined in the definition of Testing Date), the four week period ending on such Professional Fees and Net Cash Flow Testing Date.

“Threshold Amount” means \$500,000.

“Transactions” means the execution and delivery of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, the execution and delivery of the DIP ABL Credit Agreement and the other DIP ABL Loan Documents and the transactions contemplated thereby, and payment of fees and expenses related to each of the foregoing.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

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

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” and “U.S.” mean the United States of America.

“US Collateral” means any and all Collateral owned, leased or operated by a Person covered by the US Collateral Documents and any and all other Collateral of any Loan Party that may at any time, pursuant to a US Collateral Document, be or become subject to a security interest or Lien in favor of the Collateral Agent, on behalf of the Senior Credit Parties, to secure the Secured Obligations or any other rights granted to the Administrative Agent, the Collateral Agent and the Lenders in the Orders or any other Loan Document.

“US Collateral Documents” means, collectively, the US Security Agreement, the US Mortgages, the Grants of Security Interests in Intellectual Property, the Hong Kong Share Mortgage and the other security agreements, pledge agreements, agency agreements and other instruments and documents executed and delivered pursuant to this Agreement or any of the foregoing, as the same may be amended, supplemented or otherwise modified from time to time and pursuant to which US Collateral is pledged, assigned or granted (or purported to be pledged, assigned or granted) to or on behalf of the Collateral Agent for the ratable benefit of the holders of the Secured Obligations or notice of such pledge, assignment or grant is given.

“US Loan Guarantors” means the Borrower’s domestic Subsidiaries (including each of the Debtor Subsidiary Guarantors) and Holdings.

“US Loan Party” means the Borrower, Holdings and the other US Loan Guarantors party hereto and to the US Security Agreement.

“US Mortgage” means each Mortgage in respect of real property of a US Loan Party (it being agreed that each “Mortgage” entered into in connection with the Pre-Petition Term Loan Credit Agreement shall be a US Mortgage hereunder)..

“US Security Agreement” means, collectively, the Debtor-In-Possession Pledge and Security Agreement, dated as of the date hereof, among each US Loan Party and the Collateral Agent, as it may be amended, amended and restated, supplemented or otherwise modified from time to time, together with each other security agreement supplement executed and delivered by a US Loan Party pursuant to Section 6.11.

“USA PATRIOT Act” has the meaning specified in Section 10.19.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors, managers or trustees, as applicable, of such Person.

“Withdrawal” shall mean a disbursement of funds from the Funding Account. **“Withdraw”** and **“Withdrawn”** shall have correlative meanings thereto.

“Withdrawal Date” has the meaning specified in Section 2.14.

“Withdrawal Liability” means the liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withdrawal Termination Instruction” has the meaning specified in Section 2.14.

"Withholding Agent" shall mean any Loan Party, any Agent and, in the case of any U.S. federal withholding Tax, any other applicable withholding agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) **Dutch terms.** In any Loan Document, where it concerns a Dutch entity or Dutch security, a reference to:

- (i) a composition, assignment or similar arrangement with any creditor includes an *akkoord*;
- (ii) a necessary action to authorise where applicable, includes without limitation:
 1. any action required to comply with the Works Councils Act of the Netherlands (*Wet op de ondernemingsraden*); and
 2. obtaining a (conditional or unconditional) positive or neutral advice (*advies*) from the competent works council(s) if an advice is required pursuant to the Dutch Works Councils Act (*Wet op de ondernemingsraden*);
- (iii) gross negligence means *grove schuld*;
- (iv) negligence means *schuld*;
- (v) a security interest includes any mortgage (*hypotheek*), pledge (*pandrecht*), retention of title arrangement (*eigendomsvoorbehoud*), privilege (*voorrechte*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), and, in general, any right *in rem* (*beperkt recht*), created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);
- (vi) wilful misconduct means *opzet*;
- (vii) a winding-up, administration or dissolution (and any of those terms) includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);
- (viii) a moratorium includes *surseance van betaling* and a moratorium is declared or occurs includes *surseance verleend*;
- (ix) any step or procedure taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under Section 36 of the Dutch Tax Collection Act (*Invorderingswet 1990*), with the exception of any notice for the postponement of Tax liability payments filed in accordance with the decree of the Dutch State Secretary of Finance of 22 April 2020 with nr. 2020-8499 (as replaced by the decree of 6 May 2020 with nr. 2020-9594) or any other decree or arrangement through which the aforementioned decree is amended or replaced from time to time;

- (x) a receiver includes a *curator*;
 - (xi) an administrator includes a *bewindvoerder* or *stille bewindvoerder*;
 - (xii) an attachment includes a *beslag*;
 - (xiii) a merger includes a *juridische fusie*; and
 - (xiv) a demerger includes a *juridische splitsing*.
- (e) Portuguese Terms. In any Loan Document, where it concerns a Portuguese entity or Portugal Collateral, a reference to:
- (i) a lien or security interest includes, without limitation, any *penhor (financeiro, mercantil, hipoteca)* or any other security in rem (*garantia real*) contemplated in the Portuguese Civil Code or an assignment as security (*cessão de créditos com escopo de garantia*);
 - (ii) “guarantee” includes, without limitation, *a fiança, aval, garantia autónoma, garantia à primeira solicitação* or any other form of guarantee (*garantia pessoal*);
 - (iii) attachments or similar creditors process includes, without limitation, a *penhora*;
 - (iv) a “set-off” includes for purposes of Portuguese law, legal set-off (*compensação legal*) and contractual set-off (*compensação convencional*);
 - (v) “wilful misconduct” includes *dolo*.

Section 1.03 Accounting Terms and Determinations.

- (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time.
- (b) Changes in GAAP. If at any time any change in GAAP or in the application thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and any other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Computation of Certain Financial Covenants. Unless otherwise specified herein, all defined financial terms (and all other definitions used to determine such terms) shall be to those determined and computed in respect of the Borrower and its Subsidiaries.

Section 1.04 Rounding. Any financial ratios required to be maintained or satisfied by the Borrower or any of their respective Subsidiaries pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.06 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of Interest Period) or performance shall extend to the immediately succeeding Business Day.

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

Section 2.01 The Loans.

(a) New Money DIP Loans. Subject to the terms and conditions hereof and in the Orders, each Lender agrees, following entry of the Interim Order and the satisfaction (or waiver) of the conditions to Borrowing set forth in Sections 4.01 and 4.02, to make term loans to the Borrower in no more than two (2) Borrowings from time to time during the period commencing on the Interim Order Entry Date and ending on the Maturity Date, in an aggregate principal amount in Dollars for each such Borrowing not to exceed such Lender's unused New Money DIP Commitment (the "New Money DIP Loans"); provided that the total outstanding New Money DIP Loans of all Lenders shall not exceed (A) prior to the entry of the Final Order, \$30,000,000 and (B) following entry of the Final Order, the New Money DIP Commitments.

(b) Roll-Up Loans.

(i) Subject to the terms and conditions hereof and in the Orders, on the Closing Date (or, in the case of any Roll-Up Lender that is not a Lender on the Closing Date, the date such Roll-Up Lender becomes a Lender hereunder) (the “Initial Roll-Up Date”), a principal amount of loans outstanding pursuant to the Pre-Petition Term Loan Credit Agreement held by lenders thereunder, as set forth on the Initial Roll-Up Schedule (as defined below), which are also Roll-Up Lenders or Affiliates of Roll-Up Lenders hereunder, shall be automatically substituted and exchanged for (and prepaid by) Loans hereunder, in a principal amount equal to \$1.00 of principal amount of loans outstanding pursuant to the Pre-Petition Term Loan Credit Agreement of such Roll-Up Lender or such Affiliate of such Roll-Up Lender for each \$1.00 of New Money DIP Loans held by such Roll-Up Lender or such Affiliate of such Roll-Up Lender hereunder on the Initial Roll-Up Date (roll-up loans pursuant hereto, the “Initial Roll-Up Loans”). The parties hereto hereby agree that set forth on the Initial Roll-Up Schedule will be the name of each Roll-Up Lender or Affiliate of a Roll-Up Lender whose loans under the Pre-Petition Term Loan Credit Agreement will be exchanged for (and prepaid by) Initial Roll-Up Loans on the Initial Roll-Up Date, and the amount of Initial Roll-Up Loans to be received by each such Roll-Up Lender or Affiliate of such Roll-Up Lender on the Initial Roll-Up Date. On the Closing Date, Ankura, as financial advisor to the Lender Group, shall deliver to the Administrative Agent a schedule setting forth the name of each Roll-Up Lender or Affiliate of such Roll-Up Lender whose loans under the Pre-Petition Term Credit Agreement will be exchanged for (and prepaid by) Initial Roll-Up Loans hereunder on the Initial Roll-Up Date (the “Initial Roll-Up Schedule”) and the amount of Initial Roll-Up Loans to be received by such Roll-Up Lender or Affiliate of such Roll-Up Lender on the Initial Roll-Up Date (and the parties hereto hereby agree that the Administrative Agent (and the agent under the Pre-Petition Term Loan Credit Agreement) may each conclusively rely on the Initial Roll-Up Schedule in adjusting the Register (and the equivalent document under the Pre-Petition Term Loan Credit Agreement) to reflect the cancellation of loans under the Pre-Petition Term Loan Credit Agreement and the Initial Roll-Up Loans to be received by the Roll-Up Lenders on the Initial Roll-Up Date). Furthermore, the parties agree that each Roll-Up Lender and each Affiliate of a Roll-Up Lender that will receive Initial Roll-Up Loans hereunder and that is not already a Lender hereunder at the time thereof must become a Lender hereunder, by executing a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, on or prior to the applicable Initial Roll-Up Date in order to receive its portion of the Initial Roll-Up Loans. Notwithstanding anything to the contrary in this Agreement or otherwise, with respect to any Initial Roll-Up Loan that is received by a Roll-Up Lender or Affiliate thereof after the Closing Date as a result of such Roll-Up Lender or Affiliate becoming a Lender hereunder after the Closing Date, for all purposes under this Agreement and the other Loan Documents (including for purposes of calculating interest (including interest at the PIK Rate) accruing on the Intial Roll-Up Loans under Section 2.08), immediately upon such Roll-Up Lender or Affiliate becoming a Lender hereunder, the Initial Roll-Up Loan of such Lender or Affiliate shall be deemed to have been made by such Roll-Up Lender or Affiliate (and the exchange and prepayment of the applicable loans of such Roll-Up Lender or Affiliate under the Pre-Petition Term Credit Agreement shall be deemed to have occurred) on the Closing Date.

(ii) Subject to the terms and conditions hereof and in the Orders, upon any Borrowing of New Money DIP Loans on or after the Final Order Entry Date, a principal amount of loans outstanding pursuant to the Pre-Petition Term Loan Credit Agreement held by lenders thereunder, as set forth on the Additional Roll-Up Schedule (as defined below), which are also Roll-Up Lenders or Affiliates of Roll-Up Lenders hereunder, shall be automatically substituted and exchanged for (and prepaid by) Loans hereunder, in a principal amount equal to \$1.00 of principal amount of loans outstanding pursuant to the Pre-Petition Term Loan Credit Agreement of such Roll-Up Lender or such Affiliate of such Roll-Up Lender for each \$1.00 of New Money DIP Loans advanced by such Roll-Up Lender or such Affiliate of such Roll-Up Lender hereunder in connection with such Borrowing of New Money DIP Loans on or after the Final Order Entry Date (collectively, the “Additional Roll-Up Loans” and, together with the Initial Roll-Up Loans, “Roll-Up Loans”). The parties hereto hereby agree that set forth on each Additional Roll-Up Schedule will be the name of each Roll-Up Lender or Affiliate of a Roll-Up Lender whose loans under the Pre-Petition Term Loan Credit Agreement will be exchanged for (and prepaid by) Additional Roll-Up Loans upon the applicable Borrowing, and the amount of Additional Roll-Up Loans to be received by each such Roll-Up Lender or Affiliate of such Roll-Up Lender upon the applicable Borrowing. Prior to the Borrowing of New Money DIP Loans on or after the Final Order Entry Date, the Roll-Up Lenders (or Ankura) shall deliver to the Administrative Agent a schedule setting forth the name of each Roll-Up Lender or Affiliate of such Roll-Up Lender whose loans under the Pre-Petition Term Loan Credit Agreement will be exchanged for (and prepaid by) Additional Roll-Up Loans hereunder upon the applicable Borrowing (each, an “Additional Roll-Up Schedule” and, together with the Initial Roll-Up Schedule, the “Roll-Up Schedules”) and the amount of Additional Roll-Up Loans to be received by such Roll-Up Lender or Affiliate of such Roll-Up Lender upon such Borrowing of New Money DIP Loans on or after the Final Order Entry Date (and the parties hereto hereby agree that the Administrative Agent (and the agent under the Pre-Petition Term Loan Credit Agreement) may each conclusively rely on each Additional Roll-Up Schedule in adjusting the Register (and the equivalent document under the a Pre-Petition Term Loan Credit Agreement) to reflect the cancellation of loans under the Pre-Petition Credit Agreement and the Additional Roll-Up Loans to be received by the Roll-Up Lenders upon such Borrowing of New Money DIP Loans on or after the Final Order Entry Date). Furthermore, the parties agree that each Affiliate of a Roll-Up Lender that will receive Additional Roll-Up Loans hereunder and that is not already a Lender hereunder at the time thereof must become a Lender hereunder, by executing a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent, on or prior to the date of such applicable Borrowing in order to receive its portion of the Additional Roll-Up Loans.

(c) Loans Generally. Following the making of any New Money DIP Loans by a Lender, the New Money DIP Commitment of such Lender shall be automatically and permanently reduced by the amount of such New Money DIP Loans so made by such Lender, and shall automatically and permanently terminate when reduced to \$0. Once funded, each New Money DIP Loan shall be a “Loan” for all purposes under this Agreement and the other Loan Documents. Amounts borrowed, deemed borrowed or exchanged under Section 2.01 and repaid or prepaid may not be reborrowed.

Section 2.02 Borrowings and Continuations of Loans.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders proportionately to their pro rata shares of the applicable Commitments. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which shall be given in writing by delivering to the Administrative Agent a written Committed Loan Notice appropriately completed and signed by a Responsible Officer of the Borrower. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. New York City time (i) one (1) Business Day prior to the requested date of any Borrowing of Loans (in the case of the Borrowing on the Closing Date) or three (3) Business Days prior to the requested date of any Borrowing of Loans (in the case of the Borrowing to occur on or after the Final Order Entry Date), (ii) three (3) Business Days prior the requested continuation of Eurocurrency Rate Loans or any conversion of Base Rate Loans to Eurocurrency Rate Loans, and (iii) one (1) Business Day before the requested date of any conversion of Loans to Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1.0 million, or a whole multiple of \$500,000, in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, a Eurocurrency Rate Loan with a duration of one month. Any such automatic conversion to Eurocurrency Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice in accordance with Section 2.02(a), the Administrative Agent shall promptly notify each Lender of such Committed Loan Notice, and in the case of a requested Borrowing, of the amount of its New Money DIP Loan to be made as part of the requested Borrowing. If no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation described in Section 2.02(a). In the case of each Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders not later than 11:00 a.m. New York City time on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction or waiver of the applicable conditions precedent specified herein and receipt by the Administrative Agent of all of the proceeds of the New Money DIP Loans, the Administrative Agent will remit the amounts so received, in like funds, to the Funding Account except, in the case of the New Money DIP Loans being made on the Closing Date, as provided in the Funding Authorization Letter (which, for the avoidance of doubt, may provide that a portion of such funds be remitted to the Funding Account).

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. During the existence of an Event of Default, the Administrative Agent or the Required Lenders may require that no Loans may be converted to or continued as Eurocurrency Rate Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than nine (9) Interest Periods in effect.

(f) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(g) Notwithstanding anything to the contrary in this Section 2.02, subject to the terms and conditions set forth herein and in the Interim Order, the Initial Roll-Up Loans will be deemed made and fully funded hereunder on the Initial Roll-Up Date in such amounts as set forth in Section 2.01(b) above and the applicable Additional Roll-Up Loans will be deemed made and fully funded hereunder on the date of the Borrowing of New Money DIP Loans on or after the Final Order Entry Date hereunder concurrently with such Borrowing in such amounts as set forth in Section 2.01(b) above. On the date on which any Roll-Up Loans are deemed funded hereunder, such Roll-Up Loans shall be of the same Type, and, if applicable, have the same Interest Period as the New Money DIP Loans made on such date.

Section 2.03 [Reserved].

Section 2.04 [Reserved].

Section 2.05 Prepayments.

(a) Optional.

(i) The Borrower may, upon, subject to clause (iii) below, irrevocable written notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty but subject to compliance with the conditions set forth in this Section 2.05 and with Section 3.05; provided that (1) such notice must be received by the Administrative Agent not later than 2:00 p.m. New York City time (A) three (3) Business Days prior to any date of prepayment of Eurocurrency Rate Loans and (B) one (1) Business Day prior to any on the date of prepayment of Base Rate Loans; (2) any prepayment of Eurocurrency Rate Loans shall be in a minimum principal amount of \$1.0 million, or a whole multiple of \$500,000 in excess thereof; and (3) any prepayment of Base Rate Loans shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans and the order of Borrowing(s) to be prepaid. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable not later than 2:00 p.m. New York City time on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. Each prepayment of any Loans pursuant to this Section 2.05(a) shall be applied in an order of priority to repayments thereof required pursuant to Section 2.07 as directed by the Borrower and, absent such direction, shall be applied in direct order of maturity to repayments thereof required pursuant to Section 2.07. Such payment shall be paid to the Lenders in accordance with their respective Pro Rata Shares or other applicable share as provided for under this Agreement.

(b) Mandatory.

(i) Not later than the fifth Business Day following the date of receipt by the Borrower or any Subsidiary of any Net Proceeds in respect of any Prepayment Event (or, in the case of a Prepayment Event described in clause (c) of the definition thereof, on the date of the incurrence of the applicable Indebtedness), the Borrower shall prepay the Borrowings in an aggregate amount equal to 100% of such Net Proceeds; provided, that to the extent such Net Proceeds relate to any property that constitutes ABL Priority Collateral, prepayments of Loans pursuant to this Section 2.05(b)(i) with such Net Proceeds of such property shall only be required to the extent that the Discharge of ABL Obligations (as defined in the Intercreditor Agreement) has occurred; provided, further, that solely in the case of an Event of Loss, the Borrower may, at least one Business Day prior to the date of the required prepayment, deliver to the Administrative Agent a certificate of a Responsible Officer of the Borrower to the effect that the Borrower intends to cause such Net Proceeds (or a portion thereof specified in such certificate) to be reinvested in Collateral consisting of replacement assets (including through the repair, restoration or replacement of the damaged, destroyed or condemned assets) or other non-current assets useful in the business of the Borrower and its Subsidiaries, in each case, within 365 days after the receipt of such Net Proceeds, and certifying that, as of the date thereof, no Event of Default has occurred and is continuing, in which case during such period the Borrower shall not be required to make such prepayment to the extent of the amount set forth in such certificate; provided further that any such Net Proceeds that are not so reinvested by the end of such period shall be applied to prepay the Loans promptly upon the expiration of such period.

(ii) [Reserved].

(iii) [Reserved].

(iv) [Reserved].

(v) [Reserved].

(vi) (A) each prepayment of Loans pursuant to this Section 2.05(b) shall be applied ratably to the Loans then outstanding; and (B) each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata Shares of such prepayment.

(vii) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Loans required to be made pursuant to clause (i) of this Section 2.05(b) at least three (3) Business Days prior to the date of such prepayment. Each such notice shall be irrevocable and in writing, and shall specify the prepayment date and the principal amount of Loans to be prepaid and provide a reasonably detailed calculation of the amount of such prepayment, and shall be given in writing. The Administrative Agent will promptly notify each Lender of the contents of the Borrower's prepayment notice and of such Lender's Pro Rata Share of the prepayment. The Borrower shall make such mandatory prepayment not later than 2:00 p.m. New York City time on the date of such prepayment.

(viii) Funding Losses, Etc. All prepayments under this Section 2.05 shall be made together with, in the case of any such prepayment of a Eurocurrency Rate Loan on a date other than the last day of an Interest Period therefor, any amounts owing in respect of such Eurocurrency Rate Loan pursuant to Section 3.05. Notwithstanding any of the other provisions of Section 2.05(b), so long as no Event of Default shall have occurred and be continuing, if any prepayment of Eurocurrency Rate Loans is required to be made under this Section 2.05(b), prior to the last day of the Interest Period therefor, the Borrower may, in its sole discretion, deposit the amount of any such prepayment otherwise required to be made thereunder into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05(b). Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with this Section 2.05(b).

(ix) [Reserved].

(x) In connection with any mandatory prepayments by the Borrower of the Loans pursuant to this Section 2.05(b), such prepayments shall be applied on a pro rata basis to the then outstanding Loans being prepaid irrespective of whether such outstanding Loans are Base Rate Loans or Eurocurrency Rate Loans; provided that with respect to such mandatory prepayment, the amount of such mandatory prepayment shall be applied first to Loans that are Base Rate Loans to the full extent thereof before application to Loans that are Eurocurrency Rate Loans.

Section 2.06 Termination of Commitments. To the extent not terminated earlier, the New Money DIP Commitments of each Lender shall terminate immediately and without further action on the Maturity Date.

Section 2.07 Repayment of Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Lenders on the Maturity Date the aggregate principal amount of all Loans (including all Roll-Up Loans and all PIK Interest capitalized and added to the aggregate outstanding principal amount of Roll-Up Loans) outstanding on such date, together with all accrued and unpaid interest thereon.

Section 2.08 Interest.

(a) Subject to the provisions of Section 2.08(b), each Loan shall bear interest on the outstanding principal amount thereof from the date made or deemed made (including through funding of New Money DIP Loans into the Funding Account or through the roll-up of loans under the Pre-Petition Term Loan Credit Agreement into Roll-Up Loans pursuant to Section 2.01(b)) through repayment (whether by acceleration or otherwise) thereof as follows.

(i) if a Base Rate Loan, at the Base Rate plus the Applicable Rate with respect to such Loans; or

(ii) if a Eurocurrency Rate Loan, at the Eurocurrency Rate for such Interest Period plus the Applicable Rate with respect to such Loans.

The applicable Base Rate or Eurocurrency Rate shall be determined by the Administrative Agent, and such determination shall be conclusive and binding on the parties hereto, absent manifest error.

(b) Upon the occurrence and during the continuance of any Event of Default, upon notification by the Administrative Agent (acting at the direction of the Required Lenders) to the Borrower, all outstanding Obligations shall bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate and thereafter such Obligations shall bear interest at the Default Rate to the fullest extent permitted by applicable laws and without further notice, motion or application to, or hearing before, or order from, the Court.

(c) In addition to the interest payable pursuant to Section 2.08(a) or (b) above, each Roll-Up Loan shall bear additional interest on the outstanding principal amount thereof at a rate per annum equal to the PIK Rate. Once capitalized and added to the outstanding amount of the Roll-Up Loans on each Interest Payment Date in accordance with clause (d) below, amounts so added to principal will bear interest as set forth in this Section 2.08.

(d) Interest on each Loan shall be due and payable in arrears in cash on each Interest Payment Date applicable thereto and at such other times as may be specified herein; provided, that in the case of each Roll-Up Loan, interest accruing on such Roll-Up Loan at the PIK Rate shall be capitalized and added to the aggregate outstanding principal amount of such Roll-Up Loan on the Interest Payment Date applicable thereto in lieu of cash payment (and shall be treated as principal of such Roll-Up Loan at all times thereafter). Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

Section 2.09 Fees

(a) On the Closing Date, the Borrower shall pay to each Lender party to this Agreement on the Closing Date, as fee compensation for such Lender's Commitment on the Closing Date, a commitment fee (the "Commitment Fee") in an amount equal to 4.00% of such Lender's Commitment on the Closing Date. The Commitment Fee shall be fully and irrevocably due and payable in cash on the Closing Date and shall be paid as original issue discount as indicated in the last sentence of this clause (a). The Commitment Fee shall be earned by the Lenders on the Closing Date as a fee in consideration of the Commitments and the making of the New Money DIP Loans and for the time and costs expended in extending the Commitments and the making of the New Money DIP Loans. Such Commitment Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever. THE BORROWER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE COMMITMENT FEE. The Borrower expressly agrees that: (A) the Commitment Fee is reasonable and are the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Commitment Fee shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Commitment Fee; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Borrower expressly acknowledges that its agreement to pay the Commitment Fee to the Lenders as herein described is a material inducement for the Lenders to provide the Commitments and provide the Loans. The Commitment Fee shall be paid as original issue discount such that the advance of the New Money DIP Loans on the Closing Date shall be made with an original issue discount of four percent (4.00%) of the aggregate principal amount of the New Money DIP Loans so advanced on the Closing Date resulting in proceeds of such New Money DIP Loans being advanced net of such original issue discount (which original issue discount will be retained by the applicable Lenders according to their respective shares thereof). For all purposes other than funding of the New Money DIP Loans on the Closing Date, the aggregate outstanding principal balance of the New Money DIP Loans funded on the Closing Date immediately after giving effect to the borrowing of the New Money DIP Loans on the Closing Date and the amount of the New Money DIP Loans to be repaid hereunder shall be the aggregate amount borrowed under Section 2.1(a).

(b) The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including pursuant to the Agent Fee Letter) in the amounts and at the times so specified. Such fees will be in addition to the payment of the Agents' fees, costs and expenses pursuant to Section 10.04 hereof.

(c) On the Closing Date, as consideration for the agreement of Credit Suisse Loan Funding LLC ("Credit Suisse") to use commercially reasonable efforts to syndicate 100% of Credit Suisse's Commitments and outstanding Loans, the Borrower shall pay or cause to be paid to Credit Suisse a syndication fee (the "Syndication Fee") in an amount equal to \$186,741. Such Syndication Fee shall be fully earned when paid and shall not be refundable for any reason whatsoever. The Syndication Fee shall be paid as original issue discount such that the advance of the New Money DIP Loans on the Closing Date by Credit Suisse shall be made with an original issue discount of \$186,741 of the aggregate principal amount of the New Money DIP Loans so advanced on the Closing Date resulting in proceeds of such New Money DIP Loans being advanced net of such original issue discount. For all purposes other than funding of the New Money DIP Loans on the Closing Date, the aggregate outstanding principal balance of the New Money DIP Loans funded on the Closing Date immediately after giving effect to the borrowing of the New Money DIP Loans on the Closing Date and the amount of the New Money DIP Loans to be repaid hereunder shall be the aggregate amount borrowed under Section 2.1(a).

Section 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of three hundred and sixty-five (365) days, or three hundred and sixty-six (366) days, as applicable, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained in good faith by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Loan Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender, the Borrower shall execute and deliver to such Lender a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.11(a), and by each Lender in its account or accounts pursuant to Section 2.11(a), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the Obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.12 Payments Generally; Administrative Agent's Clawback.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Borrower in Dollars and in Same Day Funds not later than 2:00 p.m. New York City time on the date specified herein. Subject to clause (b) below, the Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. New York City time may, in the Administrative Agent's discretion, in each case be deemed received on the next succeeding Business Day, in the Administrative Agent's sole discretion, and any applicable interest or fee shall continue to accrue.

(b) Except as otherwise provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be; provided that, if such extension would cause payment of interest on or principal of Eurocurrency Rate Loans to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(c) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(i) if the Borrower failed to make such payment, each Lender shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "Compensation Period") at a rate per annum equal to the applicable Federal Funds Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender's Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.04. If the Administrative Agent receives funds for application to the Loan Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may (to the fullest extent permitted by mandatory provisions of applicable Law), but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the Outstanding Amount of all Loans outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Loan Obligations then owing to such Lender.

Section 2.13 Sharing of Payments by Lenders. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For avoidance of doubt, the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.08) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Loan Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Loan Obligations purchased.

Section 2.14 Withdrawal of Funds from the Funding Account. The Borrower shall have the right to withdraw the funds on deposit in the Funding Account by delivering written notice to the Administrative Agent in the form attached as Exhibit J hereto (each such notice, a “Funding Account Withdrawal Notice”) not later than 12:00 (noon), one (1) Business Day before the proposed Withdrawal Date; provided that (i) the Borrower shall concurrently provide a Liquidity forecast, in a form substantially consistent with the Approved Budget, certified by the chief financial officer of the Borrower, demonstrating, to the satisfaction of the Required Lenders or their advisors, that the Debtors’ Liquidity at the end of the week after such withdrawal will not exceed \$5,000,000, (ii) the Debtors shall be in compliance with Section 6.25 as of the date of such proposed withdrawal (and after giving effect thereto) and (iii) all conditions set forth in Section 4.02 shall be satisfied prior to and after giving effect to such withdrawal. Each Funding Account Withdrawal Notice shall specify the following information:

- (a) the amount of such withdrawal;
- (b) the date of such proposed withdrawal (which shall be on the first Business Day following the delivery of a Funding Account Withdrawal Notice) (the “Withdrawal Date”);
- (c) referencing the most recent 13-week forecast, the calculation of the amount of the withdrawal and stating how such amount complies with (i) above;
- (d) that as of the date of such withdrawal, the conditions set forth in Section 4.02 and this Section 2.14 are satisfied; and
- (e) the wiring instructions of the account of the Borrower to which the proceeds of such withdrawal are to be disbursed.

On the Withdrawal Date specified in the Funding Account Withdrawal Notice, the Administrative Agent shall disburse funds from the Funding Account in an aggregate principal amount equal to the amount specified in such Funding Account Withdrawal Notice to the account of the Borrower specified in such Funding Account Withdrawal Notice, unless the Administrative Agent has received a Withdrawal Termination Instruction from the Required Lenders prior to 10:00 a.m., New York City time, on such Withdrawal Date (and such Withdrawal Termination Instruction has not been withdrawn by the Required Lenders in writing prior to 10:00 a.m., New York City time on such Withdrawal Date). All proceeds of the Loans (except to the extent otherwise applied on the Closing Date in accordance with the Committed Loan Notice) shall be held in the Funding Account at all times until such proceeds are disbursed or otherwise applied in accordance with this Section 2.14.

On and after the date of receipt by the Administrative Agent of a written direction from the Required Lenders instructing the Administrative Agent that it may no longer honor instructions from the Borrower with respect to the Funding Account due to any of the conditions set forth in this Section 2.14 or in Section 4.02 being unsatisfied or incapable of satisfaction (a “Withdrawal Termination Instruction”), the Borrower shall have no right to request withdrawals from the Funding Account and the Administrative Agent shall not honor any such request; provided, however, that the Agents shall not be liable for (i) any disbursements pursuant to instructions from the Borrower or (ii) irrevocable electronic funds transfers or wire transfers that are subject to cut-off times, in each case, that were processed or initiated prior to receipt of such Withdrawal Termination Instruction. Any Withdrawal Termination Instruction received by the Administrative Agent from the Required Lenders shall remain in effect until such time, if any, as the Administrative Agent shall have received a written termination of such Withdrawal Termination Instruction from the Required Lenders.

Each submission by the Borrower to the Administrative Agent of a Funding Account Withdrawal Notice shall be deemed to constitute a representation and warranty by the Borrower that the conditions set forth in Section 4.02 and this Section 2.14 have been satisfied as of the applicable Withdrawal Date (both before and after giving effect to the proposed withdrawal). With respect to any disbursement, withdrawal, transfer, or application of funds from the Funding Account hereunder, the Administrative Agent shall be entitled to conclusively rely upon, and shall be fully protected in relying upon, (i) any Funding Account Withdrawal Notice submitted by the Borrower as evidence that all conditions precedent to a withdrawal and disbursement from the Funding Account to the Borrower have been satisfied (including, without limitation, those set forth in Section 4.02), unless the Administrative Agent has received a Withdrawal Termination Instruction from the Required Lenders prior to 10:00 a.m., New York City time, on the applicable Withdrawal Date (and such Withdrawal Termination Instruction has not been subsequently withdrawn by the Required Lenders in writing prior to 10:00 a.m., New York City time, on such Withdrawal Date), and (ii) any Withdrawal Termination Instruction received by it. Notwithstanding anything herein to the contrary, the Administrative Agent shall have no obligation to disburse any amount from the Funding Account in excess of the amounts then held in the Funding Account. The Agents shall have no duty to inquire or investigate whether any condition precedent to a withdrawal from the Funding Account has been satisfied, and shall not be deemed to have any knowledge that a condition is not satisfied unless it has received a Withdrawal Termination Instruction.

For the avoidance of doubt, all proceeds of Loans held in the Funding Account shall be Loans for all purposes hereunder and, notwithstanding that the proceeds of such Loans are held in the Funding Account, shall bear interest in accordance with this Agreement and shall be subject to all other terms and provisions of the Orders, this Agreement and the other Loan Documents to the same extent as all other Loans.

Notwithstanding anything to the contrary contained herein, the Administrative Agent shall be entitled to apply funds held in the Funding Account to the payment of the fees owing under the Agent Fee Letter and all expenses and indemnities payable to the Collateral Agent, the Administrative Agent or the Lenders hereunder or under any other Loan Document, regardless of whether any condition precedent in Article IV has been satisfied and regardless of whether a Withdrawal Termination Instruction has been delivered to the Administrative Agent; provided that notice of such application is provided to the Borrower and the Lenders.

ARTICLE III

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Law be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Law (as determined in the good faith discretion of the applicable Withholding Agent) requires any Withholding Agent to withhold or deduct any Tax, including both U.S. federal backup withholding and non-resident withholding Taxes, from any payment, then (A) the applicable Withholding Agent shall be entitled to make such withholding or deduction, (B) the applicable Withholding Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Law and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Loan Party shall be increased by such Loan Party as necessary so that after any required withholding or deductions for such Indemnified Taxes or Other Taxes have been made (including withholding or deductions for Indemnified Taxes or Other Taxes applicable to additional sums payable under this Section 3.01) the applicable Lender (or, in the case of payments made to any Agent for its own account, the Agent) receives an amount equal to the sum it would have received had no such withholding or deductions for Indemnified Taxes or Other Taxes been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnifications. Without limiting the provisions of subsection (a) or (b) above, the Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable by such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability (along with a written statement setting forth in reasonable detail the basis and calculation of such amounts) delivered to the Borrower by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If the Borrower reasonably believes that any such Indemnified Taxes or Other Taxes were not correctly or legally asserted, the Administrative Agent and/or each affected Lender will use reasonable efforts to cooperate with the Borrower in pursuing a refund of such Indemnified Taxes or Other Taxes so long as such efforts would not, in the sole determination of the Administrative Agent or affected Lender, exercised in good faith, result in any additional costs, expenses or risks or be otherwise disadvantageous to it.

(d) Evidence of Payments. After any payment of Taxes by any Loan Party or the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by applicable Law to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Administrative Agent, at such time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or by the Governmental Authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not any Lender is subject to information reporting requirements; (B) whether or not any payments made hereunder or under any other Loan Document are subject to withholding Taxes, (C) if applicable, the required rate of withholding or deduction, and (D) such Lender's entitlement to any available exemption from, or reduction of, applicable withholding Taxes in respect of any payments to be made to such Lender by any Loan Party pursuant to any Loan Document or otherwise to establish such Lender's status for withholding Tax purposes in the applicable jurisdiction. Notwithstanding anything to the contrary in the foregoing sentence, the completion, execution and submission of any such documentation (other than such documentation set forth in Sections 3.01(e)(ii)(A), 3.01(e)(ii)(B) (1), 3.01(e)(ii)(B)(2), 3.01(e)(ii)(B)(3), 3.01(e)(ii)(B)(4) and 3.01(e)(iii)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Each Lender agrees that if any documentation or information previously delivered by a Lender pursuant to this Section 3.01(e) (including any specific documentation set forth in subsection (ii) below) expires or becomes obsolete, or the occurrence of any change in the Lender's circumstances requires a change in the most recent documentation previously delivered by it to the Borrower and the Administrative Agent, each such Lender shall promptly update such documentation or information or promptly notify in writing the Borrower and the Administrative Agent if such Lender is no longer legally eligible to do so.

- (ii) Without limiting the generality of the foregoing:
- (A) any Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement) and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent executed copies of IRS Form W-9 (or any successor form thereto); and
- (B) each Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement) and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent whichever of the following is applicable:
- (1) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E (or any successor forms thereto) claiming eligibility for benefits of an income tax treaty to which the United States is a party;
- (2) executed copies of IRS Form W-8ECI (or any successor form thereto);
- (3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate, substantially in the form of Exhibit G-1, to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “Non-Bank Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms thereto);
- (4) where such Lender is a partnership (for U.S. federal income tax purposes) or otherwise not a beneficial owner (e.g., where such Lender has sold a participation), executed copies of IRS Form W-8IMY (or any successor form thereto) and all required supporting documentation, including, where one or more of the underlying beneficial owner(s) is claiming the benefits of the portfolio interest exemption, the Non-Bank Certificate(s) substantially in the form of Exhibit G-2 or Exhibit G-3 (*provided* that, if the Foreign Lender is a partnership and not a participating Lender, the applicable Non-Bank Certificate(s) may be provided by the Foreign Lender on behalf of the beneficial owner(s) substantially in the form of Exhibit G-4); or

(5) executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

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

(iv) If the Administrative Agent is a "United States person" (as defined in Section 7701(a)(30) of the Code), it shall provide the Borrower with two duly completed copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding. If the Administrative Agent is not a "United States person" (as defined in Section 7701(a)(30) of the Code), (A) with respect to payments received on behalf of the Lenders, it shall provide the Borrower with two duly completed copies of IRS Form W-8IMY (together with any required accompanying documentation) certifying on Part I and Part IV of such Form W-8IMY that it is a U.S. branch that has agreed to be treated as a U.S. person for U.S. federal withholding Tax purposes with respect to payments to be received by it on behalf of the Lenders and (B) with respect to payments received for its own account, it shall provide the Borrower with two duly completed copies of IRS Form W-8ECI.

(v) Notwithstanding anything to the contrary in this Section 3.01, neither the Administrative Agent nor any Lender shall be required to deliver any documentation that it is not legally eligible to deliver.

(f) Treatment of Certain Refunds. Subject to the last sentence in Section 3.01(c), at no time shall any Recipient have any obligation to file for or otherwise pursue any refund of Taxes withheld or deducted from funds paid for the account of such Recipient. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, such Recipient shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Parties under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) incurred by the such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of such Recipient, agrees to repay the amount paid over to the Borrower pursuant to this Section 3.01(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Recipient in the event such Recipient is required to repay such refund to such Governmental Authority. In such event, such Recipient shall, at the Borrower's request, provide the Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such refund received from the relevant Governmental Authority (*provided* that such Recipient may redact or so mark any information therein that it deems confidential). Notwithstanding anything to the contrary in this Section 3.01(f), in no event will any Recipient be required to pay any amount to the Borrower pursuant to this Section 3.01(f) the payment of which would place the Recipient in a less favorable net after-Tax position than the Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 3.01(f) shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(g) Delays in Requests. Failure or delay on the part of any Recipient to demand compensation pursuant to the foregoing provisions of this Section 3.01 shall not constitute a waiver of such Recipient's right to demand such compensation; provided that the Borrower or other relevant Loan Party shall not be required to compensate any Recipient pursuant to the foregoing provisions of this Section 3.01 for any incremental interest, additions to tax, penalties or expenses resulting from the failure of such Recipient to notify the Borrower or other relevant Loan Party within 180 days after such Recipient receives notification from the applicable Governmental Authority of the claim giving rise to such request for compensation.

Section 3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans, or to determine or charge interest rates based upon Eurocurrency Rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, in respect of Loans, (A) then (i) within fifteen (15) days after any notice given to the Borrower by the affected Lender or Lenders, the Administrative Agent and the Borrower shall enter into negotiations in good faith with a view to agreeing to an alternative interest rate acceptable to the Borrower to maintain affected Loans and (ii) if, at the expiration of thirty (30) days from the giving of such notice by such Lender, the Administrative Agent and the Borrower shall not have reached an agreement, such Loans will bear interest at a rate per annum reasonably determined by the Administrative Agent to be the cost of funds of representative participating members in the London interbank eurodollar market selected by the Administrative Agent for maintaining loans similar to the Loans plus the Applicable Rate. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

Section 3.03 Inability to Determine Rates(a) .

(a) If prior to the commencement of any Interest Period for a Eurocurrency Rate Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurocurrency Rate for such Interest Period; or

(ii) the Administrative Agent is notified in writing by the Required Lenders that the Eurocurrency Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Eurocurrency Rate Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable, whereupon, (x) no Loans may be made as, or converted to, Eurocurrency Rate Loans until such time as the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, and (y) any Committed Loan Notice given by the Borrower with respect to the Loans in respect of which such determination was made shall be deemed rescinded by the Borrower. The Administrative Agent shall promptly notify the Borrower and the Lenders when such circumstances no longer exist.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (x) the circumstances set forth in Section 3.03(a)(i) have arisen (including because the rate described in the definition of "Eurocurrency Rate" is not available or published on a current basis) and such circumstances are unlikely to be temporary or (y) the circumstances set forth in Section 3.03(a)(i) have not arisen but the supervisor for the administrator of the rate described in the definition of "Eurocurrency Rate" or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the rate described in the definition of "Eurocurrency Rate" no longer be used for determining interest rates for loans, then the Administrative Agent (acting at the direction of the Required Lenders) and the Borrower shall endeavor to establish an alternate rate of interest to the Eurocurrency Rate that (x) gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans denominated in Dollars in the United States at such time, and (y) is a rate for which the Administrative Agent has indicated in writing to the Lenders (which includes email) that it is able to calculate and administer, and the Administrative Agent and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Rate); provided that if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for all purposes of this Agreement (and the Lenders hereby (A) authorize and direct the Administrative Agent to execute and deliver any such amendment in respect of which the Required Lenders have indicated in writing to the Administrative Agent (which may be via email) that such amendment (and the alternate interest rate specified therein) is satisfactory to the Required Lenders and (B) acknowledge and agree that the Administrative Agent shall be entitled to all of the exculpations and indemnifications provided for in this Agreement in favor of the Administrative Agent in executing and delivering any such amendment). Notwithstanding anything to the contrary contained in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement. Until an alternate rate of interest shall be determined in accordance with this paragraph (but, in the case of the circumstances described in clause (y) above, only to the extent the rate described in the definition of "Eurocurrency Rate" for such Interest Period is not available or published at such time on a current basis), (1) no Loans may be made as, or converted to, Eurocurrency Rate Loans and (2) any Committed Loan Notice given by the Borrower requesting the making of, or conversion to or continuation of, any Eurocurrency Rate Borrowing shall be deemed rescinded by the Borrower.

Section 3.04 Increased Costs; Reserves on Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits with or for the account of, or credit extended or participated in by, any Lender (or its Lending Office);

(ii) subject any Recipient to any Tax on its loan, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (except for Indemnified Taxes or Other Taxes indemnifiable under Section 3.01 and any Excluded Taxes); or

(iii) impose on any Lender (or its Lending Office) or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its Lending Office) or such other Recipient of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or other Recipient (whether of principal, interest or any other amount) then, upon request of such Lender by delivery of a certificate pursuant to subsection (c) of this Section 3.04, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient for such additional costs incurred or reduction suffered.

(b) Capital and Liquidity Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding liquidity or capital 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, the New Money DIP Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to liquidity requirements and capital adequacy), then from time to time, upon request by delivery of a certificate pursuant to subsection (c) of this Section 3.04, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender prepared in good faith setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof by the Borrower.

(d) Delays in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof); provided, further, that the Borrower shall not be required to compensate a Lender for increased costs or reductions suffered more than nine (9) months after such Change in Law, except that in the case of any such change having retroactive effect such period shall be extended until nine (9) months after the Lender becomes aware of such change.

Section 3.05 Compensation for Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

- (i) any continuation, payment or prepayment of any Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or
- (ii) any failure by a Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan on the date or in the amount notified by the Borrower.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

Section 3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender (at the written request of the Borrower) shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If a Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if a Lender becomes and continues to be a Defaulting Lender, the Borrower may replace such Lender in accordance with Section 10.13.

(c) Defaulting Lender. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law, the Commitments and Loans of such Defaulting Lender shall not be included in determining whether the Required Lenders or any other Required Lenders have taken or may take any action hereunder or under any other Loan Document (including any consent to any amendment, waiver or other modification pursuant to Section 10.5); provided that any amendment, waiver or other modification that under Section 10.01 requires the consent of all Lenders affected thereby shall require the consent of such Defaulting Lender in accordance with the terms thereof.

Section 3.07 Survival. Each party's obligations under this Article III shall survive termination of the New Money DIP Commitments, repayment of all other Loan Obligations hereunder, any assignment of rights by or the replacement of a Lender, and resignation or replacement of any Agent.

ARTICLE IV

CONDITIONS PRECEDENT

Section 4.01 Conditions to Credit Extension on the Closing Date. The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject to satisfaction (or waiver in accordance with Section 10.01) of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or electronic copies (including, but not limited to, PDF) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party and each in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders:

- (i) executed counterparts of this Agreement and the Loan Guaranty;
- (ii) executed counterparts of the Security Agreement, each other Collateral Document (other than Collateral Documents that pursuant to the express terms hereof (or otherwise in accordance with the Closing Checklist) are not contemplated to be executed and delivered on the Closing Date) and the Intercreditor Agreement, together with:
 - (A) copies of UCC, United States Patent and Trademark Office, United States Copyright Office, tax and judgment lien searches, in each case as of a recent date made with respect to the Loan Parties in such offices and the states (or other jurisdictions) of formation of such Persons or in which the chief executive officer of each such Person is located, in each case as indicated in the schedules to the Security Agreement, together with copies of the financing statements (or similar documents) disclosed by such search, and accompanied by evidence satisfactory to the Administrative Agent that the Liens indicated in any such financing statement (or similar document) are in respect of a Permitted Lien or have been or will be contemporaneously released or terminated;
 - (B) certificates, if any, representing the Capital Stock constituting Collateral pledged under the Collateral Documents referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the instruments constituting Collateral pledged under the Collateral Documents indorsed in blank (or confirmation in lieu thereof that such certificates, powers and instruments are in the possession of the administrative agent under the DIP ABL Facility); and
 - (C) all documents and instruments set forth on the Closing Checklist under the heading "Closing Date Security Documents"; provided, that for purposes of the Mexico Collateral Documents, the Administrative Agent (or its counsel) shall have received the notarial instruments containing the corresponding Mexico Collateral Documents, duly executed by the parties thereof and ratified before the presence of a Mexican notary public. The Order shall be effective to create in favor of the Collateral Agent a legal, valid, perfected and enforceable security interest and Lien upon the Collateral of the Loan Parties (other than the Foreign Subsidiary Guarantors), with the priority set forth in the Order and the terms thereof.

(iii) to the extent applicable in the relevant jurisdiction, (A) a copy of the certificate or articles of incorporation or organization (or equivalent in the relevant jurisdiction), including all amendments thereto, of each Loan Party, certified, if applicable, as of a recent date by the Secretary of State or similar Governmental Authority of the jurisdiction of its organization, and a certificate as to the good standing or excerpt from the Dutch trade register (in each case, where relevant) of each Loan Party as of a recent date, from such Secretary of State or similar Governmental Authority, (B) in the case of each Loan Party organized under the laws of the Netherlands, a copy of the shareholders register or, if applicable, and only to the extent applicable, partnership register of such Loan Party, and (C) a certificate of a Responsible Officer of each Loan Party, dated the Closing Date and certifying (i) that attached thereto is a true and complete copy of the by-laws, memorandum and articles of association or operating (or limited liability company) agreement or limited partnership agreement (or equivalent in the relevant jurisdiction) of such Loan Party as in effect on the Closing Date, (ii) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) and, if required by the applicable governing documents, the general meeting of shareholders, of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such Person is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (iii) that the certificate or articles of incorporation or organization (or equivalent in the relevant jurisdiction) of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of incorporation or organization furnished pursuant to clause (A) above, and (iv) as to the incumbency and specimen signature of each Responsible Officer executing any Loan Document on behalf of such Loan Party and countersigned by another officer as to the incumbency and specimen signature of the Responsible Officer of such Loan Party executing the certificate pursuant to clause (B) above.

(iv) a legal opinion from Latham & Watkins LLP, counsel to the Loan Parties, and each of the legal opinions listed on Schedule 4.01(a)(iv), in each case, in a form reasonably satisfactory to the Administrative Agent;

(v) evidence that the Administrative Agent shall have received insurance certificates satisfying the requirements of Section 6.07;

(vi) a certificate of a Responsible Officer of the Borrower confirming satisfaction of the conditions set forth in Section 4.02(a), (b) and (d); and

(vii) a (conditional or unconditional) positive or neutral written advice from any works council in relation to the transactions contemplated by this Agreement and any other document required for compliance with the Dutch Act on Works Councils (*Wet op de ondernemingsraad*); provided that such advice received on May 20, 2020 (as supplemented on May 29, 2020) shall be deemed to have satisfied this condition.

(b) The Administrative Agent shall have received at least three (3) Business Days prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act that has been reasonably requested at least five (5) Business Days in advance of the Closing Date. The Administrative Agent shall have received an IRS Form W-9 or applicable W-8 duly completed and executed by the Borrower and each Guarantor.

(c) The Administrative Agent shall have received the Initial Budget, in form and substance satisfactory to the Required Lenders.

(d) The Petition Date shall have occurred, and the Borrower and each Guarantor (other than the Foreign Subsidiary Guarantors) shall be a debtor and debtor-in-possession in the Cases.

(e) The Commitment Fee, the Syndication Fee and all fees and expenses required to be paid hereunder and invoiced at least two (2) business days prior to the Closing Date shall have been paid in full or will be paid on the Closing Date out of the initial Credit Extension.

(f) Bankruptcy Related Items.

(i) The Cases of any of the Debtors shall have not been dismissed or converted to cases under Chapter 7 of the Bankruptcy Code.

(ii) A motion, in form and substance satisfactory to the Lenders and the Administrative Agent, seeking approval of the DIP Term Facility, shall have been filed in each of the Cases within one (1) day of the Petition Date.

(iii) All "first day" orders and all related pleadings intended to be entered on or prior to the Interim Order Entry Date shall have been entered by the Bankruptcy Court and shall be acceptable in form and substance to the Required Lenders, it being understood that drafts approved by counsel to the Required Lenders prior to the Petition Date are acceptable.

(iv) The Borrower shall have made no payments after the Petition Date on account of any Indebtedness arising prior to the Petition Date unless such payment is made (i) pursuant to the Approved Budget or (ii) pursuant to "first day" orders acceptable to the Required Lenders.

(v) No trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or examiner (other than a fee examiner) shall have been appointed in any of the Cases.

(vi) The Interim Order Entry Date shall have occurred not later than five (5) calendar days following the Petition Date, and the Interim Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the prior written consent of the Required Lenders or the Administrative Agent (with the consent of the Required Lenders), and the Administrative Agent shall have received a copy of the Interim Order entered by the Bankruptcy Court.

(g) The Administrative Agent and the Lenders shall have received evidence, in form and substance satisfactory to the Required Lenders, that, prior to or concurrently with the effectiveness of this Agreement, (i) the DIP ABL Credit Agreement shall be in full force and effect and (ii) all conditions precedent to the initial extensions of credit thereunder shall have been satisfied.

- (i) No Material Adverse Effect. No Material Adverse Effect shall have occurred since the Petition Date.
- (ii) No Action. Except for the Cases, there shall exist no unstayed action, suit, investigation, litigation or proceeding pending in any court or before any arbitrator or governmental instrumentality (other than the Cases) that would reasonably be expected to have a Material Adverse Effect.

Each Lender, by delivering its signature page to this Agreement, and funding its Loans on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved or accepted or to be satisfied with, each Loan Document and each other document required to be approved by, acceptable or satisfactory to any Agent, the Required Lenders or any other Lenders, as applicable, on the Closing Date.

Section 4.02 Each Credit Extension and Withdrawal. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) on any date, including the Closing Date, and the Borrower's right to make a Withdrawal from the Funding Account on each Withdrawal Date, are subject to the satisfaction (or waiver in accordance with Section 10.01) of the following conditions precedent:

- (a) the representations and warranties contained in Article V are true and correct in all material respects on and as of the Closing Date as if made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; provided, however, that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct as so qualified in all respects on such date;
- (b) no Default or Event of Default shall exist or would result from such proposed Credit Extension or Withdrawal or from the application of the proceeds therefrom;
- (c) the Administrative Agent shall have received a fully completed and executed Committed Loan Notice or Funding Account Withdrawal Notice, as applicable, and all required deliveries under Section 2.14, if applicable;
- (d) the Interim Order or the Final Order, as the case may be, shall be in full force and effect, and shall not (in whole or in part) have been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal;
- (e) with regard to any Credit Extension after the Closing Date, all "second day" orders approving on a final basis any "first day" orders intended to be entered on or prior to the date of entry of the Final Order shall have been entered by the Bankruptcy Court, shall be acceptable to the Required Lenders, shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay and shall not have been modified or amended other than as reasonably acceptable to the Required Lenders; and

(f) with respect to any Withdrawal Date that is on or after the date which is thirty-five (35) days following the Petition Date, the Final Order shall have been signed and entered by the Bankruptcy Court, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed or vacated absent the prior written consent of the Required Lenders.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Section 4.02(a), (b), (d) and (e) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Holdings and the Borrower represent and warrant to the Administrative Agent and the Lenders at the time of each Credit Extension and on each Withdrawal Date that:

Section 5.01 Organization; Powers. Each of the Loan Parties and each of its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent the concept of “good standing” is recognized thereunder), (b) except where the failure to have such power and authority could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, has all requisite power and authority to carry on its business as now conducted and is qualified to do business in, and (c) is in good standing in, every jurisdiction where such qualification is required except where the failure to be in good standing could not reasonably be expected to result in a Material Adverse Effect.

Section 5.02 Authorization; No Contravention. Subject to the entry of the Orders and the terms thereof, the Transactions are within each Loan Party’s corporate or organizational powers and have been duly authorized by all necessary organizational and, if required, stockholder (or equity holder, as applicable) action. Subject to the entry of the Orders and the terms thereof, the Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The Portugal Loan Guarantor incorporated or established in Portugal has a justified self- interest (*justificado interesse próprio*) in rendering and delivering the Portugal Collateral Documents and the Portugal Guarantee having therefore the legal and statutory power and capacity to execute and deliver the aforementioned security in accordance with article 6 (3) of the Portuguese Companies Code.

Section 5.03 Governmental Approvals; No Conflicts. Subject to the entry of the Orders and the terms thereof, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its Subsidiaries, other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Code, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any of its Subsidiaries or its assets (other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Code), or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Subsidiaries, except Liens created pursuant to the Loan Documents and Liens permitted hereunder securing the DIP ABL Obligations permitted hereunder except, in each case, as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.04 [Reserved].

Section 5.05 Financial Condition; No Material Adverse Change.

(a) Holdings has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2019, reported by Deloitte & Touche LLP, independent public accountants. Such financial statements, together with all other financial statements delivered pursuant to the Pre-Petition Term Loan Credit Agreement or this Agreement thereafter relating to the Loan Parties and their Subsidiaries that have been delivered by any Loan Party to the Administrative Agent or the Lenders (or to the Pre-Petition Term Loan Administrative Agent or lenders under the Pre-Petition Term Loan Credit Agreement) present fairly, in all material respects, the financial position and results of operations and cash flows of Holdings and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments).

(b) No event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since the Petition Date.

Section 5.06 Litigation and Environmental Matters.

(a) Except for the Cases and any litigation resulting therefrom, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting the Loan Parties or any of their Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that directly involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) no Loan Party nor any of its Subsidiaries has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability, (ii) each Loan Party and each of its Subsidiaries, and their respective current operations and properties, are in compliance with all Environmental Laws and have obtained, maintained and are in compliance with all permits, licenses or other approvals required under any Environmental Law and (iii) no Loan Party nor any of its Subsidiaries has become subject to any Environmental Liability.

(c) Since the Petition Date, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 5.07 [Reserved].

Section 5.08 Properties.

(a) As of the Closing Date, Schedule 5.08 sets forth the address of each parcel of real property that is owned or leased by any Loan Party and whether such parcel is owned or leased. Except as could not reasonably be expected to have a Material Adverse Effect, each lease and sublease of any parcel of real property is valid and enforceable in accordance with its terms and is in full force and effect, and, to the knowledge of the applicable Loan Party, no default (other than any default caused by the commencement of the Cases) by any party to any such lease or sublease exists. Each of the Loan Parties and its Subsidiaries has good and marketable title to, or valid leasehold interests in, all its real and personal property, free of all Liens other than those permitted by Section 7.01.

(b) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) each Loan Party and its Subsidiaries owns, or is licensed to use, all Intellectual Property used in its business as currently conducted, a correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 5.08(b), (ii) no claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property in any respect, (iii) no Loan Party or any of its Subsidiaries knows of any valid basis for any claim described in preceding clause (ii) and (iv) the use of Intellectual Property by each Loan Party and its Subsidiaries does not infringe on the rights of any Person.

(c) Insurance. Schedule 5.08(c) sets forth a description of all insurance maintained by or on behalf of the Loan Parties and the Subsidiaries as of the Closing Date. As of the Closing Date, all premiums in respect of such insurance have been paid. The Borrower and Holdings believe that the insurance maintained by or on behalf of the Loan Parties and the Subsidiaries is adequate.

Section 5.09 Compliance with Laws and Agreements.

(a) Other than violations arising as a result of the commencement of the Cases and except as otherwise excused by the Bankruptcy Code, each Loan Party and its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

(b) If any Netherlands Loan Guarantor is a credit institution (*kredietinstelling*) under the laws of the Netherlands, such party is in compliance with the applicable provisions of the Netherlands Financial Supervision Act and any implementing regulation.

Section 5.10 Taxes. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes due and payable (including in its capacity as a Withholding Agent), except Taxes (i) that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has established adequate reserves determined in accordance with GAAP, (ii) that need not be paid pursuant to an order of the Bankruptcy Court or pursuant to the Bankruptcy Code or, for the avoidance of doubt and (iii) for which a notice for a postponement of payment has been filed in accordance with the decree of the Dutch State Secretary of Finance of 22 April 2020 with nr. 2020-8499 (as replaced by the decree of 6 May 2020). Other than the tax assessment pending in Mexico against Libbey México, S. de R.L. de C.V. (“Libbey Mexico”) with respect to its 2010 taxable year (the “Libbey Mexico Tax Assessment”), there are no current or proposed Tax deficiencies or assessments with respect to any Loan Party and/or its Subsidiaries that, in the aggregate, are expected to be material. The Loan Parties have provided a true, complete and correct description of the Libbey Mexico Tax Assessment to the Administrative Agent as of the Effective Date, and there have been no material adverse developments with respect to the Libbey Mexico Tax Assessment since the Effective Date. None of Holdings nor any Subsidiary of Holdings has guaranteed or otherwise has any liability in respect of the Libbey Mexico Tax Assessment, and no Lien exists with respect to any asset of any Loan Party or Subsidiary in favor of any Governmental Authority in respect of the Libbey Mexico Tax Assessment other than Liens on the assets of Libbey Mexico (but not the assets of Holdings or any other Subsidiary thereof). There are no Liens for any material Taxes on any assets of each Loan Party and its Subsidiaries, other than Permitted Liens and no Lien exists with respect to any asset of any Loan Party or Subsidiary in favor of any Governmental Authority in respect of the Libbey Mexico Tax Assessment other than Liens on the assets of Libbey Mexico (but not the assets of Holdings or any other Subsidiary thereof). There are no Liens for any material Taxes on any assets of each Loan Party and its Subsidiaries (other than Liens automatically arising under the laws of Mexico with respect to the assets of Libbey Mexico (but not any other Loan Party or Subsidiary) in respect of the Libbey Mexico Tax Assessment).

Section 5.11 ERISA Compliance. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

Section 5.12 Capitalization and Subsidiaries. As of the Closing Date, Schedule 5.12 sets forth (a) a correct and complete list of the name and relationship to Holdings of each and all of Holdings' Subsidiaries, (b) a true and complete listing of each class of each of the Loan Parties' (other than Holdings') authorized Equity Interests, of which all of such issued shares are validly issued, outstanding, fully paid and non-assessable (other than for those Subsidiaries that are limited liability companies and limited partnerships and to the extent such concepts are not applicable in the relevant jurisdiction), and (c) the type of entity of Holdings and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party has been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and is fully paid and non-assessable.

Section 5.13 Margin Regulations; Investment Company Act.

(a) No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the regulations of the Board of Governors. If requested by any Lender or the Administrative Agent, the relevant Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

(b) No Loan Party nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

Section 5.14 Disclosure. No information contained in any of the reports, the financial statements, certificates or other written information (including public filings of Holdings) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) taken as a whole contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which such statements were made not misleading; provided that, with respect to pro forma and projected financial information, the Borrower and Holdings represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered in light of the circumstances when made and, if such pro forma and projected financial information was delivered prior to the Closing Date, as of the Closing Date. The Initial Budget and each Budget and cash flow forecast delivered thereafter are prepared in good faith based upon estimates and assumptions believed by management of the Borrower to be reasonable in light of the current conditions and facts known to the Borrower at the time delivered (it being understood that the Budgets and cash flow forecasts and the assumptions on which they were based, may or may not prove to be correct).

Section 5.15 Solvency of Foreign Subsidiaries.

(a) Immediately after the consummation of the Transactions to occur on the Closing Date (including guarantees and grants of security made under the Loan Documents and the DIP ABL Loan Documents), and immediately after the making or deemed making of each Loan hereunder and the fundings under the DIP ABL Loan Documents, each Loan Party that is not a Debtor will be Solvent, (i) the fair value of the assets of such Loan Party that is not a Debtor, at a fair valuation, at such time exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of such Loan Party that is not a Debtor at such time are greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) such Loan Party that is not a Debtor at such time is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) such Loan Party that is not a Debtor at such time does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is then conducted and is proposed to be conducted thereafter. Each Mexico Loan Guarantor further agrees that it will not be considered insolvent pursuant to Article 2166 of the Mexican Federal Civil Code (*Código Civil Federal*) or its correlative provisions of the Civil Codes of the States that comprises Mexico or Article 9 of the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*) (or any successor provision).

(b) No Loan Party that is not a Debtor intends to, or will permit any of its Subsidiaries that are not Debtors to, and no Loan Party believes that it or any of its Subsidiaries that are not Debtors will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

Section 5.16 Holding Companies/Dormant Entities.

(a) Holdings does not engage in any business or activity other than the ownership of all the outstanding shares of capital stock of the Borrower, Subsidiaries of the Borrower and activities incidental thereto, including, without limitation, employee stock options and responsibilities of a public company. Holdings does not own any assets (other than Equity Interests of the Borrower) or have any liabilities (other than liabilities under the Loan Documents, the DIP ABL Credit Agreement, the Pre-Petition ABL Credit Agreement and the Pre-Petition Term Loan Credit Agreement) and liabilities reasonably incurred in connection with its maintenance of its existence and Guarantees and other Indebtedness permitted under Section 7.03, including, without limitation, liabilities and liens granted with respect to the DIP ABL Credit Agreement.

(b) Other than as disclosed in the Hong Kong Share Mortgage, Libbey Asia Limited does not engage in any business or activity other than the ownership of all the outstanding shares of capital stock of Libbey Trading (Beijing) Co., Ltd. and Libbey Glassware (China) Co., Ltd., and does not own any assets (other than Equity Interests Libbey Trading (Beijing) Co., Ltd. and Libbey Glassware (China) Co., Ltd.) or have any liabilities.

(c) Crisa Libbey, S.A. de C.V. does not engage in any business activity and does not own any assets or have any liabilities (other than any de minimis assets or liabilities relating to the maintenance of its existence).

Section 5.17 Security Interest in Collateral. Subject to the entry of the Orders and the terms thereof, the provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Collateral Agent, for its benefit and the benefit of the Administrative Agent and the Lenders, and such Liens, upon the filing of financing statements or Mortgages or the obtaining of possession or “control,” in each case, as applicable, constitute perfected and continuing Liens on the Collateral, securing, in the case of the Liens created under the Collateral Documents, the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except as provided in the Orders or, with respect to ABL Priority Collateral, as provided in the Intercreditor Agreement.

Section 5.18 Employment Matters. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of the Borrower, threatened. The hours worked by and payments made to employees of the Loan Parties and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, local or foreign law dealing with such matters except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, all payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Subsidiary.

Section 5.19 Anti-Terrorism Law.

(a) Each Loan Party and, to the knowledge of the Borrower, their Affiliates is in compliance in all material respects with any Requirement of Law relating to terrorism or money laundering (“Anti-Terrorism Laws”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “Executive Order”) or the USA PATRIOT Act (as defined below).

(b) No Loan Party and to the knowledge of the Borrower, none of their Affiliates or broker or other agent of any Loan Party acting or benefiting in connection with the Loans is any of the following:

- (i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (iv) a person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a person that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) at its official website or any replacement website or other replacement official publication of such list or similarly named by any similar governmental agencies of the United Kingdom or the European Union.

(c) No Loan Party and, to the knowledge of the Borrower, no broker or other agent of any Loan Party acting in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

Section 5.20 Foreign Corrupt Practices Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 5.21 Cases; Orders.

(a) The Cases were commenced on the Petition Date in accordance with applicable Laws and notice thereof was given for (i) the motion seeking approval of the Loan Documents and the Interim Order and, when applicable, Final Order, (ii) the hearing for the entry of the Interim Order, and (iii) the hearing for the entry of the Final Order (provided that notice of the final hearing will be given as soon as reasonably practicable after such hearing has been scheduled).

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Loan Obligations will constitute allowed administrative expense claims in the Cases having the priority of the Liens in respect of the DIP Term Facility as set forth in the Intercreditor Agreement, with respect to all administrative expense claims and unsecured claims against the Debtors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims of the kind specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject only to payment of the Carve-Out in accordance with the Orders, and any Claims secured by valid, enforceable, and non-avoidable Liens that (A) are in existence on the Petition Date and (B) are either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Secured Obligations will be secured by a valid and perfected Lien on all of the Collateral of the Debtors subject, as to priority, to the extent set forth in the Intercreditor Agreement and to the Carve-Out in accordance with the Orders.

(d) The Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, or, without the consent of the Required Lenders, modified or amended. The Loan Parties are in compliance in all material respects with the Interim Order (with respect to the period on and after entry of the Interim Order and prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order).

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, upon the Maturity Date (whether by acceleration or otherwise) of any of the Loan Obligations, the Administrative Agent and Lenders shall be entitled to immediate payment of such Loan Obligations and to enforce the remedies provided for hereunder or under applicable Laws, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

(f) To the best of the Loan Parties' knowledge, the stipulations of the Loan Parties in each of the Orders are true, accurate and correct in all material respects as of the dates specified therein.

(g) Subject to the applicable provisions of the Interim Order or the Final Order, as the case may be, neither the Loan Obligations nor the Loan Obligations (as defined in the Pre-Petition Term Loan Credit Agreement) shall be subject to setoff or recoupment or any such rights under Bankruptcy Code section 553 or otherwise with respect to any claim the Loan Parties may have against the Lenders arising on or before the Petition Date.

Section 5.22 Foreign Collateral Documents. The assets pledged or transmitted under the Netherlands Collateral Documents, the Luxembourg Collateral Document, the Mexico Collateral Documents and the Portugal Collateral Documents to secure the Secured Obligations constitute substantially all of the real and personal property, and substantially all of the tangible and intangible property, of the Netherlands Loan Guarantors, the Mexico Loan Guarantors and the Portugal Loan Guarantor, respectively, and the entirety of the Equity Interests issued by the Netherlands Loan Parties, Mexico Loan Guarantors and the Portugal Loan Guarantor, respectively.

Section 5.23 Netherlands Loan Parties.

(a) For the purpose of the Insolvency Regulation, the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) for each Netherlands Loan Guarantor is in the Netherlands and no Netherlands Loan Guarantor has an establishment (as that term is used in Article 2 (10) of the Insolvency Regulation) in any other jurisdiction.

(b) No Netherlands Loan Guarantor or other Loan Party resident in the Netherlands for tax purposes is currently required to make any deduction for or on account of Tax from any payment to be made pursuant to any Loan Document to which such Netherlands Loan Guarantor or other Loan Party resident for tax purposes in the Netherlands is a party.

(c) Each Netherlands Loan Guarantor is resident for tax purposes in the Netherlands only and does not have a permanent establishment or other taxable presence outside the Netherlands.

ARTICLE VI

AFFIRMATIVE COVENANTS

Until (i) the Commitments have expired or been terminated and (ii) the principal of and interest on each Loan and all fees and other Loan Obligations (other than contingent indemnity obligations with respect to then unasserted claims) shall have been paid in full in cash, Holdings and the Borrower shall, and Holdings and the Borrower shall cause (except in the case of the covenants set forth in Section 6.01, 6.02, 6.03, 6.19 and 6.26) each Subsidiary to:

Section 6.01 Financial Statements and Other Reports. Deliver to the Administrative Agent (for prompt further distribution to each Lender) and to Ankura:

(i) within ninety (90) days after the end of each fiscal year of Holdings, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants. Notwithstanding the foregoing, in the event that the Borrower delivers an annual report on Form 10-K of Holdings for such fiscal year the Borrower will be deemed to have delivered the financial statements required by this Section 6.01(i) on the date of such filing;

(ii) within fifty-five (55) days after the end of each fiscal quarter of Holdings (or, with respect to the fiscal quarter ended March 31, 2020, no later than June 29, 2020), its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of the Responsible Officers of the Borrower as presenting fairly in all material respects the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes. Notwithstanding the foregoing, in the event that the Borrower delivers a quarterly report on Form 10-Q of Holdings for such fiscal quarter, the Borrower will be deemed to have delivered the financial statements required by this Section 6.01(ii) on the date of such filing;

(iii) within thirty (30) days (or, with respect to the fiscal month ended May 2020, forty-five (45) days) after the end of each fiscal month (beginning with the fiscal month ending May 31, 2020), the consolidated balance sheet of the Holdings and its consolidated Subsidiaries as of the end of such fiscal month and the related consolidated statements of operations and cash flows of Holdings and its consolidated Subsidiaries for such fiscal month (in the case of such statements of operations) and for the period from the beginning of the then current fiscal year to the end of such fiscal month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year;

(iv) no later than by 11:00 p.m. (New York City time) on each fourth Wednesday after the Petition Date (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a Budget covering the 13-week period beginning on the first Business Day of the week in which it is delivered. Each Budget delivered after the Closing Date shall be subject to the consent of the Required DIP Lender Group and no such Budget shall be effective as the Approved Budget until so approved; provided, that in the event the Required DIP Lender Group, on the one hand, and the Loan Parties, on the other hand, cannot agree as to an updated, modified or supplemented Budget, such disagreement shall give rise to an Event of Default once the full 13-week period covered by the Approved Budget has terminated; provided, further that Administrative Agent and the Lenders (i) may assume that the Loan Parties will comply with the Approved Budget, (ii) shall have no duty to monitor such compliance, (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget; provided that none of the foregoing shall limit the payment of professional fees that benefit from the Carve-Out, as and when allowed by the Bankruptcy Court at any time (whether by interim order, procedural order or otherwise), (iv) the line items in the Approved Budget for payment of interest, expenses and other amounts to the Administrative Agent and the Lenders shall be estimates only, and the Loan Parties remain obligated to pay any and all Loan Obligations in accordance with the terms of the Loan Documents and the applicable Order regardless of whether such amounts exceed such estimates, and (v) nothing in any Approved Budget shall constitute an amendment or other modification of any Loan Document;

(v) concurrently with any delivery of financial statements under Section 6.01(i) hereof, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(vi) no later than the first Wednesday after the Closing Date and each Wednesday thereafter (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), (x) a 13-week cash flow forecast for the Debtors prepared in a manner consistent with the Budget and otherwise in form and substance satisfactory to, the Required DIP Lender Group, accompanied by, in each case, a weekly comparison to actual reporting, comparing the Debtors' actual receipts and disbursements for the prior calendar week with the projected receipts and disbursements for such prior calendar week, including a report from the Debtors identifying and addressing any variance of actual performance to projected performance for the prior calendar week and (y) an certificate of a Responsible Officer of the Borrower reporting Liquidity as of the last Business Day of the immediately preceding week;

(vii) no later than the second Wednesday after the Closing Date and each second Wednesday thereafter (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a 13-week cash flow forecast for the Subsidiaries of the Borrower organized under the laws of the Netherlands and Portugal on a consolidated basis for each country, prepared in a manner consistent with the Budget and otherwise in form and substance satisfactory to, the Required DIP Lender Group, accompanied by, in each case, a biweekly comparison to actual reporting, comparing the Netherland and Portugal Subsidiaries' actual receipts and disbursements for the prior two (2) calendar weeks with the projected receipts and disbursements for such prior two (2) calendar weeks, including a report from the Loan Parties identifying and addressing any variance of actual performance to projected performance for the prior two (2) calendar weeks;

(viii) no later than the second Wednesday after the Closing Date and each second Wednesday thereafter (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a 13-week cash flow forecast for the Subsidiaries of the Borrower organized under the laws of Mexico (the "Mexican Subsidiaries") on a consolidated basis, prepared in a manner consistent with the Budget and otherwise in form and substance satisfactory to, the Required DIP Lender Group, accompanied by, in each case, a biweekly comparison to actual reporting, comparing the Mexican Subsidiaries' actual receipts and disbursements for the prior two (2) calendar weeks with the projected receipts and disbursements for such prior two (2) calendar weeks, including a report from the Loan Parties identifying and addressing any variance of actual performance to projected performance for the prior two (2) calendar weeks;

(ix) no later than the second Business Day after the Closing Date and each Business Day thereafter, a sales flash report that includes sales detail by channel for the Debtors (with respect to the Business Day ended two (2) Business Days prior to such delivery date (as of close of business on such day)) and on weekly basis on each Wednesday by channel and geography for the Debtors and their Subsidiaries, in form and substance reasonably acceptable to the Required DIP Lender Group, together with a comparison of the actual results to the Debtors' most recent Budget;

(x) no later than the first Business Day after the Closing Date and each Business Day thereafter, a liquidity report showing Liquidity as of close of business on the prior Business Day, in form and substance reasonably acceptable to the Required DIP Lender Group; and

(xi) no later than June 26, 2020 (or such later date as agreed to by the Required DIP Lender Group), projected financial statements of Holdings and its consolidated Subsidiaries for the 2020 and 2021 fiscal years (including, without limitation, the consolidated balance sheet of Holdings and its consolidated Subsidiaries, and the related consolidated statements of income or operations and cash flows for each such fiscal year), which projected financial statements shall reflect the Debtors' cost reduction initiatives anticipated to occur during the pendency of the Cases, and otherwise be in form and substance reasonably acceptable to the Required DIP Lender Group.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution to each Lender:

(i) concurrently with any delivery of financial statements under Sections 6.01(i), (ii) or (iii), a Compliance Certificate signed by a Responsible Officer of the Borrower;

(ii) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Holdings, the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as the case may be;

(iii) no later than five (5) Business Days prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, waiver or other modification other than a supplement to add additional guarantors with respect to any Indebtedness in excess of the Threshold Amount (so long as such guarantors also guaranty all of the Secured Obligations and such guaranty is permitted by this Agreement);

(iv) together with the delivery of the financial statements pursuant to Section 6.01(i), a report setting forth the information required by Section 3.2 of the Security Agreement or confirming that there has been no change in such information since the Closing Date or the date of the last such report;

(v) together with the delivery of the Budget pursuant to Section 6.01(iv) (or, if no Budget is delivered in such week, together with the delivery of the cash flow forecast pursuant to Section 6.01(vi)), a Budget Variance Report. Each such report shall be certified by the chief financial officer of the Borrower as being prepared in good faith and fairly presenting in all material respects the information set forth therein;

(vi) promptly (and in any event within five (5) Business Days) upon the reasonable request of the Collateral Agent or the Required Lenders (i) a report setting forth the information required by Section 3.2 of the Security Agreement describing the legal name and the jurisdiction of formation of each Loan Party and the location of the chief executive officer of each Loan Party or confirming that there has been no change in such information since the later of the Closing Date or the date of the last such report, (ii) a description of each event, condition or circumstance during the last fiscal quarter requiring a mandatory prepayment under Section 2.05(b) and (iii) a list of each Subsidiary of the Borrower as of the date of delivery or confirmation that there has been no change in such information since the later of the Closing Date or the date of the last such list;

(vii) each Loan Party shall notify the Collateral Agent on a quarterly basis together with the delivery of each Compliance Certificate pursuant to Section 6.02(i) delivered with the financial statements delivered pursuant to Section 6.01(ii), and at such other times as the Collateral Agent or the Required Lenders reasonably request, in the event that such Loan Party, either directly or through any agent, employee, licensee or designee, files an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar U.S. federal office or agency, and upon the request of the Collateral Agent, such Grantor (as defined in the US Security Agreement) shall execute, deliver and file any short form Intellectual Property security agreements to evidence the Collateral Agent's security interest on such Patent, Trademark or Copyright, and the General Intangibles (as defined in Article 9 of the UCC) of such Loan Party relating thereto or represented thereby.

(viii) promptly following any request therefor, (x) copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Loan Party or any ERISA Affiliate with the Internal Revenue Service with respect to each Pension Plan; (ii) the most recent actuarial valuation report for each Pension Plan; (iii) such other documents or governmental reports or filings relating to any Pension Plan as the Administrative Agent shall reasonably request and (y) with respect to any Multiemployer Plan, (i) any documents described in Section 101(k) of ERISA that any Loan Party or any ERISA Affiliate may request and (ii) any notices described in Section 101(l) of ERISA that any Loan Party or any ERISA Affiliate may request; provided that if such Loan Party or ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the Loan Party or ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof;

(ix) promptly following any request therefor, such other reasonably available information regarding the operations, business affairs and financial condition of Holdings or any Subsidiary, as the Administrative Agent or any Lender may reasonably request; and

(x) simultaneously with the delivery of each Borrowing Base Certificate and all other written financial reporting and other periodic reporting provided under the DIP ABL Loan Documents, a copy of each such Borrowing Base Certificate or other written financial reporting or periodic reporting, as applicable.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02 may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) upon written request by the Administrative Agent, the Borrower shall deliver paper copies of such documents to the Administrative Agent for further distribution to each Lender until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents and the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Holdings or the Borrower with any such request for delivery.

Each of Holdings and the Borrower hereby acknowledges that (i) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of Holdings and the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each of Holdings and the Borrower hereby agrees that so long as Holdings or the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that: (w) all the Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat the Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to Holdings or the Borrower or their respective securities for purposes of United States Federal and state securities laws (*provided, however, that to the extent the Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07*); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Administrative Agent shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, neither Holdings nor the Borrower shall be under any obligation to mark the Borrower Materials "PUBLIC."

Section 6.03 Notices of Material Events. The Borrower and Holdings will furnish to the Administrative Agent and each Lender prompt written notice of the following:

- (i) the occurrence of any Default or a “Default” or “Event of Default” (as such terms are defined in the DIP ABL Credit Agreement);
- (ii) receipt of any written notice of any governmental investigation or any litigation or proceeding commenced or threatened against any Loan Party that (i) seeks damages in excess of \$500,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Laws involving liability in excess of \$500,000, (vi) contests any tax, fee, assessment, or other governmental charge in excess of \$500,000, or (vii) involves any product recall;
- (iii) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to have a Material Adverse Effect;
- (iv) any loss, damage, or destruction to the Collateral in the amount of \$500,000 or more, whether or not covered by insurance; and
- (v) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section 6.03 shall be accompanied by a statement of a Responsible Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 6.04 Payment of Obligations. In accordance with the Bankruptcy Code (in the case of the Debtors) and subject to any required approval by the Bankruptcy Court (in the case of the Debtors) (it being understood that no Debtor shall be obligated to make any payments hereunder that may, in its reasonable judgment, result in a violation of any applicable law, including the Bankruptcy Code, without an order of the Bankruptcy Court authorizing such payments), each Loan Party will, and will cause each Subsidiary to, pay or discharge all liabilities and obligations, including Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto if and to the extent required by GAAP, (b) the failure to do so could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (c) the payment of Taxes is temporarily postponed in accordance with the Decree of the Dutch State Secretary of Finance of 6 May 2020 (nr. 2020-9594).

Section 6.05 Existence; Conduct of Business. Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, Intellectual Property rights, licenses and permits material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, in each case, except as could not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 7.04 and (b) carry on and conduct its business in substantially the same fields of enterprise as it is presently conducted or enterprises reasonably related thereto or reasonable extensions thereof.

Section 6.06 Maintenance of Properties. Except as could not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 6.07 Insurance.

(a) Each Loan Party will, and will cause each Subsidiary to, maintain insurance with financially sound and reputable insurance companies (in each case, authorized to conduct business in the jurisdiction where the subject Property is located) on all its material Property in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business. All such insurance shall, to the extent customary (but in any event, not including business interruption insurance and personal injury insurance) (i) provided that no cancellation thereof shall be effective until at least 10 days after receipt by the Administrative Agent of written notice thereof and (ii) name the Administrative Agent as an additional insured party or lenders' loss payee, as applicable.

(b) Property coverage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include (i) a mortgage clause (regarding improvements to real property subject to a Mortgage) and a lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, Senior Credit Parties (in their capacity as such) or any other Affiliate of a Loan Party shall be a co-insurer (the foregoing not being deemed to limit the amount of self-insured retention or deductibles under such policies, which self-insured retention or deductibles shall be consistent with business practices in effect on the Closing Date or as otherwise determined by the Responsible Officers of the Loan Parties acting reasonably in their business judgment), and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Senior Credit Parties. Each endorsement to such casualty or liability policy referred to in this Section 6.07(b) shall also provide that it shall not be canceled or modified in any manner that would cause this Section 6.07 to be violated, or not renewed (i) by reason of nonpayment of premium except upon prior written notice thereof by the insurer to the Collateral Agent in accordance with the terms of the applicable policy (giving the Collateral Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon prior written notice thereof by the insurer to the Collateral Agent in accordance with the terms of the applicable policy. The Borrower shall deliver to the Collateral Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Collateral Agent, including an insurance binder) together with evidence satisfactory to the Collateral Agent of payment of the premium therefor.

(c) If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then Borrower or applicable Loan Party shall (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in amounts and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) deliver to the Administrative Agent and Collateral Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent and Collateral Agent, including, without limitation, evidence of annual renewals of such insurance.

Section 6.08 Compliance with Laws. Except as could not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect and except as otherwise excused by the Bankruptcy Code, each Loan Party will, and will cause each Subsidiary to, comply with all Requirements of Law applicable to it or its property.

Section 6.09 Books and Records. Each Loan Party will, and will cause each Subsidiary to, keep proper books of record and account in which full, true and correct entries in all material respects in conformity with GAAP (in addition to any standards which each Loan Party may require to maintain to comply with any Requirement of Law in its particular jurisdiction where such party conducts business), are made of all dealings and transactions in relation to its business and activities.

Section 6.10 Inspection Rights. Each Loan Party will, and will cause each Subsidiary to permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender or any consultants, accountants, lawyers and appraisers retained by the Administrative Agent), upon reasonable prior notice during normal business hours, to visit and inspect its properties, to examine and make extracts from its books and records, including environmental assessment reports and Phase I or Phase II studies, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided, however that financial officers of the Borrower shall be entitled to participate in any discussion or meeting with the accountants and, absent the continuance of an Event of Default, the Borrower shall not be required to reimburse the Administrative Agent or the Lenders for more than one visit (and if there is more than one such visit in a fiscal year due to the occurrence and continuance of an Event of Default, the Administrative Agent shall be reimbursed for its visits before any Lender is so reimbursed for its visits) in any fiscal year (it being understood without limitation of the foregoing that there shall be no limitation on the frequency of such visits and inspections (x) if an Event of Default shall have occurred and be continuing or (y) such visit and/or inspection is paid for by the relevant Lender). After the occurrence and during the continuance of any Event of Default, each Loan Party shall provide the Administrative Agent and each Lender with contact information relating to its suppliers. Nothing in this Section 6.10 shall be construed to cause Holdings, any Loan Party or any of its or their Subsidiaries to divulge any materials covered by an attorney-client privilege that has not been waived or otherwise subject to confidentiality or disclosure restrictions that would prohibit or restrict such disclosure.

Section 6.11 Future Guarantees. Subject to applicable Law, the Borrower and each Subsidiary that is a Loan Party shall cause each of its Subsidiaries formed or acquired after the date of this Agreement in accordance with this Agreement to become a Loan Party by executing a joinder to this Agreement (or, in the case of a Foreign Subsidiary organized under the laws of Portugal, a joinder to the Portugal Guarantee) (and in the case of any subsidiary organized under the laws of Mexico, a joinder to the Mexico Guarantee) in form and substance reasonably satisfactory to the Required Lenders by the earlier of (I) the date that any such Subsidiary Guarantees any DIP ABL Obligations and (II) the date that is thirty (30) days after the formation or acquisition of such Subsidiary. Upon execution and delivery thereof, each such Person (A) shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in each such capacity under the Loan Documents and (B) will grant first priority Liens (or in the case of Liens on ABL Priority Collateral, junior in priority only to the Liens securing the ABL Obligations to the extent provided in the Intercreditor Agreement) to the Collateral Agent, for its benefit and the benefit of the Administrative Agent and the Lenders, in any property of such Loan Party which constitutes Collateral, including any parcel of Real Property located in the United States owned by such Loan Party.

Section 6.12 Environmental Laws. Except as could not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party will, and will cause each Subsidiary to:

- (a) comply with all Environmental Laws, and obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws; and
- (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws (except for such investigations, studies, sampling and testing, remedial, removal and other actions, orders or directives that are being contested in good faith).

Section 6.13 Additional Collateral.

(a) If any material assets (including any Real Property located in the United States) are acquired by the Borrower or any Subsidiary that is a Loan Party after the Closing Date (other than assets constituting Collateral under any Collateral Document that become subject to the Lien in favor of the Administrative Agent upon acquisition thereof), the Borrower will notify the Administrative Agent and the Lenders thereof, and, if requested by the Administrative Agent or the Required Lenders, the Loan Parties, as applicable, will cause such assets to be subjected to a Lien securing the Secured Obligations in accordance with and subject to the terms of the Collateral Documents and will take, and cause its Subsidiaries that are Loan Parties to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in Section 6.16, all at the expense of the applicable Loan Party. All such after-acquired assets (and any assets of a Guarantor joined hereto pursuant to Section 6.11) of a Debtor shall automatically be subject to fully perfected first priority Liens (subject, in the case of ABL Priority Collateral, to the priority set forth in the Intercreditor Agreement) on, and security interest in, all right, title and interest of the Loan Parties, pursuant to and as described in Section 6.20 and the Interim Order or the Final Order, as applicable.

(b) Each Debtor will cause 100% of the issued and outstanding Equity Interests of each of its domestic Subsidiaries and each Foreign Subsidiary (other than Crisa Libbey, S.A. de C.V.) directly owned by the Borrower or any domestic Subsidiary, to be subject at all times to a perfected Lien (junior in priority only to the Liens securing the ABL Obligations to the extent provided in the Intercreditor Agreement) in favor of the Collateral Agent pursuant to the terms and conditions of the US Collateral Documents as the Collateral Agent shall reasonably request.

(c) Each Netherlands Loan Guarantor will cause 100% of the issued and outstanding Equity Interests of (i) each of its Subsidiaries that is organized under the laws of the Netherlands and (ii) each of its direct Subsidiaries that is not organized under the laws of the Netherlands to be subject at all times to a perfected Lien (junior in priority only to the Liens securing the ABL Obligations to the extent provided in the Intercreditor Agreement) in favor of the Collateral Agent pursuant to the terms and conditions of the Netherlands Collateral Documents (or in the case of (ii) above, similar terms and conditions) as the Collateral Agent shall reasonably request.

(d) Each Mexico Loan Guarantor will, within the time frame required therefor by Section 5.23 and at all times thereafter, cause 100% of the issued and outstanding Equity Interests of (i) each of its Subsidiaries that is organized under the laws of Mexico and (ii) each of its direct Subsidiaries that is not organized under the laws of Mexico to be subject at all times to a perfected Lien (junior in priority only to the Liens securing the ABL Obligations to the extent provided in the Intercreditor Agreement) (it being understood that the existence of the Netherlands Intercompany Pledge shall not be construed to cause this requirement not to be satisfied so long as the Netherlands Intercompany Pledge remains at all times subject to the Netherlands Subordination Agreement) in favor of the Collateral Agent pursuant to the terms and conditions of the Mexico Collateral Documents (or in the case of (ii) above, similar terms and conditions) as the Collateral Agent shall reasonably request.

(e) Each Portugal Loan Guarantor will cause 100% of the issued and outstanding Equity Interests of (i) each of its Subsidiaries that is organized under the laws of Portugal and (ii) each of its direct Subsidiaries that is not organized under the laws of Portugal to be subject at all times to a perfected Lien (junior in priority only to the Liens securing the ABL Obligations to the extent provided in the Intercreditor Agreement) in favor of the Collateral Agent, acting for itself and on behalf and for the benefit of the remaining Senior Credit Parties, pursuant to the terms and conditions of the Portugal Collateral Documents (or in the case of (ii) above, similar terms and conditions) as the Collateral Agent shall reasonably request.

Section 6.14 Use of Proceeds. The Borrower will use the proceeds of any Borrowing solely in accordance with the Orders and the Approved Budget, (a) to pay fees and expenses in connection with the Loan Documents and (b) for working capital of the Debtors following the commencement of the Cases (including, for the avoidance of doubt, making payments in respect of the ABL Obligations to the extent contemplated by the Approved Budget and within Permitted Variances thereunder); and (c) to pay payments in respect of Adequate Protection provided to the agents and lenders under the Pre-Petition Term Loan Documents as authorized by the Bankruptcy Court in the applicable Order; provided that none of the foregoing shall limit the payment of professional fees that benefit from the Carve-Out, as and when allowed by the Bankruptcy Court at any time (whether by interim order, procedural order or otherwise). Except to the extent set forth in the Orders, no proceeds of the DIP Term Facility, any Collateral or any Cash Collateral may be used (i) to finance any investigation (including discovery proceedings), initiation or prosecution of any adversary action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the Administrative Agent or Lenders, the agents and lenders under the Pre-Petition Term Loan Documents or the Lender Group or any member thereof, or their respective rights and remedies under or in respect of the Loan Documents, the Pre-Petition Term Loan Documents, any Order, or any Adequate Protection provided to the agents and lenders under the Pre-Petition Term Loan Documents, (ii) in connection with challenging, invalidating, disallowing, recharacterizing, setting aside, avoiding, subordinating (other than to the Carve-Out), in whole or in part, or taking or attempting to take any other action to render unenforceable, the liens, claims, interests and Adequate Protection of the Administrative Agent and the Lenders or the agents and lenders under the Pre-Petition Term Loan Credit Agreement, including for the avoidance of doubt, (A) objecting to or contesting the validity, extent, amount, perfection, priority, or enforceability of the obligations under the Loan Documents or the Pre-Petition Term Loan Documents or the Liens securing the Loan Obligations or the Loan Obligations (as defined in the Pre-Petition Term Loan Credit Agreement), or (B) objecting to or contesting the validity, extent, amount, perfection, priority, or enforceability of the Loan Obligations or the Loan Obligations (as defined in the Pre-Petition Term Loan Credit Agreement) and Liens under the Loan Documents or the Pre-Petition Term Loan Documents, (iii) for any purpose that is prohibited under the Bankruptcy Code or the Orders, and (iv) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body, which payment is not provided for in the Approved Budget, without the prior written consent of the Required Lenders; provided that none of the foregoing shall limit the payment of professional fees that benefit from the Carve-Out, as and when allowed by the Bankruptcy Court at any time (whether by interim order, procedural order or otherwise).

Section 6.15 USA PATRIOT Act. The Borrowers shall and shall cause the Guarantors to promptly, following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA Patriot Act, (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

Section 6.16 Further Assurances.

(a) Subject to the Intercreditor Agreement, each Loan Party will execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), which may be required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents to the extent required by the Collateral Documents, all at the expense of the applicable Loan Party.

(b) Without limiting the foregoing, within ninety (90) days (or such longer period, if any, that may be approved by the Required Lenders in their respective sole discretion) of the reasonable written request of the Collateral Agent (acting at the written direction of the Required Lenders), the Collateral Agent shall have received, with respect to each Mortgaged Property so requested, each of the following, in favor of the Collateral Agent, in form and substance reasonably satisfactory to the Required Lenders:

(i) counterparts of a Mortgage with respect to each Mortgaged Property duly executed and delivered by the applicable Loan Party, (ii) a title insurance policy or a marked-up commitment or signed pro forma thereof for such property available in each applicable jurisdiction (the "Mortgage Policies") insuring the Lien of each such Mortgage as a valid first priority Lien on the property described therein, free of any other Liens except for Permitted Liens together with such endorsements, coinsurance and reinsurance and in such amounts as the Collateral Agent may reasonably request and which are available at commercially reasonable rates in the jurisdiction where the Mortgaged Property is located, (iii) either new ALTA surveys in form and substance reasonably acceptable to the Collateral Agent or such existing surveys together with no change affidavits sufficient for the title company to remove all standard survey exceptions from the Mortgage Policies and issue the endorsements required in (ii) above to the extent such coverage and endorsements are available in the applicable jurisdictions and at commercially reasonable rates, (iv) opinions, addressed to the Collateral Agent and the Senior Credit Parties, from local counsel in each jurisdiction (A) where a Mortgaged Property is located regarding the enforceability of the Mortgage and (B) where the applicable Loan Party granting the Mortgage on said Mortgaged Property is organized, regarding the due authorization, execution and delivery of such Mortgage, and in each case, such other matters as may be in form and substance reasonably satisfactory to the Collateral Agent; (v) evidence reasonably acceptable to the Collateral Agent of payment of all Mortgage Policy premiums, search and examination charges, escrow charges and related charges, mortgage recording Taxes, fees, charges, costs and expenses required for the recording of the Mortgage and issuance of the Mortgage Policies referred to above, and (vi) such other documents as the Collateral Agent may reasonably request with respect to any such Mortgaged Property.

(ii) Completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto and, to the extent any Mortgaged Property subject to the Flood Insurance Laws is identified as being located in a special flood hazard area, evidence of insurance as required by Section 6.07(c)).

(c) Each Mexico Loan Guarantor shall promptly, but no later than two (2) Business Days after execution of this Agreement, deliver to the Administrative Agent a certified copy of the public deed that contains a special irrevocable power of attorney for lawsuits and collections (*poder para pleitos y cobranzas*) in form and substance acceptable to the Administrative Agent, granted by each Mexico Loan Guarantor in favor of the Process Agent in terms of the first and fourth paragraphs of Article 2554 of the Federal Civil Code of Mexico (*Código Civil Federal*) and the corresponding provisions of the Civil Codes applicable in the States of Mexico (or any successor provisions) and in Mexico City, Mexico, in the presence of a Mexican notary public.

(d) Without limiting the generality of the foregoing, if any material assets (including any real property or improvements thereto or any interest therein) are acquired by the Borrower or any Subsidiary that is a Loan Party after the Closing Date (other than assets constituting Collateral under any Collateral Document that become subject to the Lien in favor of the Collateral Agent upon acquisition thereof), the Borrower will notify the Collateral Agent thereof, and, if requested by the Collateral Agent or the Required Lenders, the US Loan Parties, the Netherlands Loan Guarantors, the Mexico Loan Guarantors or the Portugal Loan Guarantor, as applicable, will cause such assets to be subjected to a Lien securing the Secured Obligations in accordance with and subject to the terms of the US Collateral Documents, the Netherlands Collateral Documents, the Luxembourg Collateral Document, the Mexico Collateral Documents or the Portugal Collateral Documents, as applicable, and will take, and cause its Subsidiaries that are Loan Parties to take, such actions as shall be necessary or reasonably requested by the Collateral Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the applicable Loan Party.

Section 6.17 [Reserved].

Section 6.18 Post-Closing Requirements.

(a) No later than ten (10) Business Days after the Closing Date, the Borrower shall use its best efforts to deliver to the DIP Lender Group evidence satisfactory to the Required DIP Lender Group that the Borrower has obtained a “point in time” credit rating (but not any specific rating) from Moody’s and S&P for the Loans funded or deemed to be funded hereunder on the Closing Date; and

(b) On or before the date applicable thereto (or such longer period as the Required DIP Lender Group may agree in their sole reasonable discretion), the Borrower shall fulfill (or cause to be fulfilled) each of the conditions subsequent set forth on Schedule 6.18.

Section 6.19 Maintenance of Independent Directors. Cause the Board of Directors of Holdings to include at all times two (2) independent directors acceptable to the Required DIP Lender Group; provided that, for the avoidance of doubt, the directors added on May 12, 2020 are acceptable to the Required Lenders.

Section 6.20 Priority of Liens. Upon entry of the Interim Order (and when applicable, the Final Order) and to the extent provided for in such Order, its Loan Obligations hereunder and under the other Loan Documents:

(a) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute an allowed Superpriority Claim payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof (including Avoidance Actions and Avoidance Proceeds (upon entry of the Final Order)), having the priority of the Liens in respect of the DIP Term Facility as set forth in the Intercreditor Agreement, but in each case subject to the Carve-Out to the extent provided in the Orders;

(b) pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code and subject to the Carve-Out to the extent provided in the Orders, shall be secured by a Lien on all Collateral of the Debtors, which Lien shall have the priority of the Liens in respect of the DIP Term Facility as set forth in the Intercreditor Agreement;

(c) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) unless otherwise provided for in the Loan Documents, any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors; and

(d) for the avoidance of doubt, the Collateral shall include Avoidance Proceeds upon entry of the Final Order.

Subject to and effective only upon entry of the Final Order and the terms thereof, except to the extent of the Carve-Out, no costs or expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under Chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the Administrative Agent and the Required Lenders, as the case may be with respect to their respective interests, and no consent shall be implied from any action, inaction or acquiescence by the Administrative Agent or the Lenders. Subject to and effective only upon entry of the Final Order and the terms thereof, in no event shall the Administrative Agent or the Lenders be subject to (i) the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code (subject only to and effective upon entry of the Final Order), or (ii) the equitable doctrine of "marshaling" or any other similar doctrine with respect to the Collateral.

Except for the Carve-Out, subject to the entry of the Orders and the terms thereof, the Superpriority Claims shall at all times be senior to the rights of the Borrower, any Chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any Chapter 7 trustee, or any other creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 cases (if any of the Cases are converted to cases under Chapter 7 of the Bankruptcy Code).

Each Loan Party hereby confirms and acknowledges that, pursuant to the Interim Order (and, when entered, the Final Order), the Liens on the Collateral of the Debtors in favor of the Collateral Agent on behalf of and for the benefit of the Senior Credit Parties in all of the assets of the Debtors shall be created and (to the extent the Interim Order (and, when entered, the Final Order) is effective to perfect under local law) perfected, without the necessity of the execution, recordation of filings by any Loan Party of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the Collateral Agent of, or over, any Collateral of the Debtors, as set forth in the Interim Order and the Final Order, as applicable.

Section 6.21 Milestones. The Loan Parties shall comply with the following milestones (collectively, the “Milestones” and each a “Milestone”), unless waived or extended with the consent of the Required Lenders (which may be by email):

- (a) the Bankruptcy Court shall enter the Interim Order by no later than five (5) days following the Petition Date;
- (b) the Debtors shall file with the Bankruptcy Court by no later than fifteen (15) days following the Petition Date, an Acceptable Plan and Acceptable Disclosure Statement;
- (c) the Debtors shall file with the Bankruptcy Court by no later than fifteen (15) days following the Petition Date, a motion to approve the Acceptable Disclosure Statement and the related solicitation materials, dates and deadlines;
- (d) the Bankruptcy Court shall enter the Final Order approving the DIP Term Facility on a final basis by no later than thirty-five (35) days following the Petition Date;
- (e) the Bankruptcy Court shall enter an order approving the solicitation of the Acceptable Plan by no later than fifty-five (55) days following the Petition Date;
- (f) the Debtors shall commence solicitation of the Acceptable Plan by no later than fifty-seven (57) days following the Petition Date;
- (g) the Bankruptcy Court shall enter an Acceptable Confirmation Order by no later than one hundred (100) days following the Petition Date; and
- (h) consummation of the Acceptable Plan by no later than one hundred five (105) days following the Petition Date.

Section 6.22 Bankruptcy Related Matters. The Borrower will and will cause each of the Guarantors and Subsidiaries to:

- (a) cause all proposed (i) “first day” orders, (ii) “second day” orders, (iii) orders related to or affecting the Loan Obligations, the Loan Obligations (as defined in the Pre-Petition Term Loan Credit Agreement), the Loan Documents and the Pre-Petition Term Loan Documents, any other financing or use of Cash Collateral, any sale or other disposition of Collateral outside the ordinary course, cash management, adequate protection, any plan of reorganization and/or any disclosure statement related thereto, (iv) orders concerning the financial condition of the Borrower or any of its Subsidiaries or other Indebtedness of the Loan Parties or seeking relief under section 363, 365, 1113 or 1114 of the Bankruptcy Code or section 9019 of the Federal Rules of Bankruptcy Procedure, and (v) orders establishing procedures for administration of the Cases or approving significant transactions submitted to the Bankruptcy Court, in each case, proposed by the Debtors to be in accordance with and permitted by the terms of this Agreement and reasonably acceptable to the Required Lenders in all respects, it being understood and agreed that the forms of orders approved by the Required Lenders prior to the Petition Date are in accordance with and permitted by the terms of this Agreement and are reasonably acceptable in all respects;

(b) comply with each order entered by the Bankruptcy Court in connection with the Cases;

(c) comply in a timely manner with their obligations and responsibilities as debtors-in-possession under the Bankruptcy Code, the Bankruptcy Rules, the Interim Order and the Final Order, as applicable, and any other order of the Bankruptcy Court;

(d) provide the Administrative Agent and the Lenders with reasonable access to non-privileged information (including historical information) and relevant personnel regarding strategic planning, cash and liquidity management, operational and restructuring activities, in each case subject to customary confidentiality restrictions;

(e) (i) deliver to the Lenders Advisors promptly as soon as available but not later than two (2) Business Days prior to filing, copies of pleadings, motions, applications, orders, financial information and other documents (for the avoidance of doubt, excluding any administrative filings) to be filed by or on behalf of the Loan Parties with the Bankruptcy Court in the Cases, or distributed by or on behalf of the Loan Parties to any official or unofficial committee appointed or appearing in the Cases or any other party in interest related to a plan, a disclosure statement, plan exclusivity, assumption or rejection of executory contracts and unexpired leases, key employee incentive or retention plans, and each such pleading motion, (ii) use reasonable best efforts to deliver any other pleading, motion, application, order, financial information or other document as set forth in, and with the timing set forth in, preceding clause (i) to the Lender Advisors, and (iii) other than in respect of ordinary course transactions, consult with the Lender Advisors prior to taking or deciding not to take any material actions that are not in compliance with, or not in accordance with, any orders entered in the Cases; provided that the terms of this Section 6.22(e) remain subject to any confidentiality obligations imposed by applicable law; and

(f) if not otherwise provided through the Bankruptcy Court's electronic docketing system, promptly as soon as available, deliver to the Lender Advisors copies of all final pleadings, motions, applications, orders, financial information and other documents filed by or on behalf of the Loan Parties with the Bankruptcy Court in the Cases; *provided* that the terms of this Section 6.22(f) remain subject to any confidentiality obligations imposed by applicable law.

Section 6.23 ABL Loan Documents. The Loan Parties shall keep and maintain the DIP ABL Loan Documents in full force and effect and use the proceeds of advances and other extensions of credit thereunder solely for purposes and in amounts set forth in the Approved Budget (subject to the variances and exclusions set forth herein) and as permitted by the DIP ABL Loan Documents, the Loan Documents and the Orders.

Section 6.24 Employment Matters. (i) Within ten (10) days of the Petition Date, the Debtors shall contact each applicable union (Local 711T (Shreveport) and/or Locals 65T, 700, 59M and 105 (Toledo)) to commence good-faith negotiations with such unions regarding any required modifications to the terms of the collective bargaining agreements (“CBAs”) between Debtors and such union, as determined and approved by the Required Lenders (the “Selected CBAs”); and (ii) within ninety (90) days of the Petition Date (or such longer period of time as the Required DIP Lender Group may agree in their sole discretion), the Debtors shall have either (x) executed definitive documents with each union modifying the respective Selected CBA on terms acceptable to the Required DIP Lender Group (the “Modified CBAs”), if necessary, or (y) if determined necessary by the Required DIP Lender Group in their sole discretion, (I) submitted their application to the Bankruptcy Court to reject any Selected CBAs which are not Modified CBAs in a manner acceptable to the Required DIP Lender Group in their sole discretion pursuant to Section 1113 of the Bankruptcy Code, and/or to modify retiree benefits under the CBAs (and outside of the CBAs) in a manner acceptable to the Required DIP Lender Group in their sole discretion pursuant to section 1114 of the Bankruptcy Code and (II) the Bankruptcy Court shall have entered a final order regarding the requested modifications to (1) the Selected CBAs pursuant to Section 1113 of the Bankruptcy Code, and/or (2) retiree benefits under the CBAs (or outside of the CBAs); provided that, in the case of this subclause (y), in the event that the Bankruptcy Court has not issued a ruling within its mandated time period to do so pursuant to the Bankruptcy Code, the Debtors shall modify or terminate the CBAs on the terms set forth in such Modified CBAs and modify or terminate the retiree benefits consistent with the application to the Bankruptcy Court.

Section 6.25 Budget Compliance. The Loan Parties shall comply with, and the proceeds of the Loans and all Withdrawals shall be used by the Loan Parties in accordance with, the Budget, subject to Permitted Variances and the exclusions set forth herein.

Section 6.26 Lender Calls. Upon advance written request of the Lender Advisors, the Borrower shall, at its own expense, facilitate and hold calls between the Lender Advisors, on the one hand, and members of the Borrower’s executive management team and their advisors, on the other hand, at least once every week, which calls may also be attended by any Lenders who are not Public Lenders.

Section 6.27 Netherlands Loan Parties.

(a) Each Netherlands Loan Guarantor shall maintain its center of main interests in the Netherlands for the purposes of the Insolvency Regulation.

(b) Each Netherlands Loan Guarantor shall be a resident for tax purposes solely in the Netherlands and shall not have any permanent establishment or other taxable presence outside the Netherlands, unless with the prior written consent of the Administrative Agent (acting at the written direction of the Required Lenders).

(c) If, at any time, a Netherlands Loan Guarantor or any of its Dutch subsidiaries is part of a Netherlands Fiscal Unity and such Netherlands Fiscal Unity is, in respect of such Netherlands Loan Guarantor or Dutch subsidiary, as applicable, terminated (*verbroken*) or disrupted (*beëindigd*) as a result of or in connection with the Administrative Agent enforcing its rights under any Netherlands Collateral Document, such Netherlands Loan Guarantor or Dutch subsidiary, as applicable, shall, at the request of the Administrative Agent, together with the parent (*moedermaatschappij*) or deemed parent (*aangewezen moedermaatschappij*) of the Netherlands Fiscal Unity, for no consideration and as soon as reasonably practicable, lodge a request with the Dutch Tax Authority to allocate and hand over any tax losses (as referred to in Article 20 of the Dutch Corporate Income Tax Act) to the Netherlands Loan Guarantor or Dutch subsidiary, as applicable, leaving the Netherlands Fiscal Unity (within the meaning of Article 15af of the Dutch Corporate Income Tax Act), to the extent such tax losses are attributable (*toerekenbaar*) to the Netherlands Loan Guarantor or Dutch subsidiary, as applicable, leaving the Netherlands Fiscal Unity and lodge a request with the Dutch Tax Authority to allocate and hand over any amount of interest (as referred to in article 15b of the Dutch Corporate Income Tax Act) to the Netherlands Loan Guarantor or Dutch subsidiary, as applicable, leaving the Netherlands Fiscal Unity (within the meaning of Article 15ahb of the Dutch Corporate Income Tax Act), to the extent such amount of interest is attributable (*toerekenbaar*) to the Netherlands Loan Guarantor or Dutch subsidiary, as applicable, leaving the Netherlands Fiscal Unity.

Section 6.28 Appointment of CRO. Promptly upon and in any event within five (5) Business Days of the Required DIP Lender Group's written request therefor, the Debtors shall hire a chief restructuring officer (such officer, the "CRO") acceptable to the Required DIP Lender Group, whose scope of authority shall be acceptable to the Required DIP Lender Group. Upon and following any appointment of a CRO, (i) none of the Loan Parties shall terminate the CRO or modify or reduce the scope of the CRO's authority without the express prior written consent of the Required DIP Lender Group, and (ii) the DIP Lender Group shall have reasonable direct access to the CRO, including at least one (1) weekly telephonic update from the CRO as to the Loan Parties' operations and restructuring progress.

ARTICLE VII

NEGATIVE COVENANTS

Until (i) the Commitments shall have expired or been terminated and (ii) the principal of and interest on each Loan and all fees and other Loan Obligations (other than contingent indemnity obligations with respect to then unasserted claims) shall have been paid in full in cash, each Loan Party covenants and agrees with the Agents and the Lenders that:

Section 7.01 Liens. The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, Incur or suffer to exist any Lien (other than Permitted Liens) upon any of its property or assets (including Capital Stock of Subsidiaries), whether owned on the Closing Date or acquired after that date.

In addition, if the Borrower or any Subsidiary Guarantor, directly or indirectly, shall create, Incur or suffer to exist any Lien (other than Permitted Liens) securing any ABL Obligations (as defined in the Intercreditor Agreement), the Borrower or such Subsidiary Guarantor, as the case may be, must concurrently grant a first priority Lien (or in the case of ABL Priority Collateral, junior in priority solely to the Liens securing the ABL Obligations) upon such property as security for the Loan Obligations.

Section 7.02 [Reserved].

Section 7.03 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

- (a) The Borrower will not, and will not permit any of its Subsidiaries to, incur any Indebtedness.
- (b) The provisions of Section 7.03(a) hereof will not prohibit the Incurrence of the following Indebtedness:
- (1) Indebtedness of the Borrower and the Loan Parties under the Loan Documents;

(2) Indebtedness of the Borrower, any Subsidiary Guarantor or any Subsidiary created under (x) the DIP ABL Loan Documents in an aggregate principal amount (excluding the Terminated Swap Obligations, Swap Obligations and Banking Services Obligations, each as defined in the DIP ABL Loan Documents, but including the face amount of any Letters of Credit (as defined in the DIP ABL Loan Documents) outstanding thereunder), not to exceed as of any date \$120,000,000 less the aggregate principal amount of Loans outstanding under the Pre-Petition ABL Loan Documents as of such date, together with all Terminated Swap Obligations (as defined in the DIP ABL Loan Documents as in effect on the date hereof) outstanding thereunder under the date hereof and all Swap Obligations and Banking Services Obligations from time to time outstanding thereunder, and (y) the Pre-Petition ABL Loan Documents in an aggregate principal amount not to exceed the aggregate principal amount thereunder as of the Petition Date (including, for the avoidance of doubt, any secured Swap Obligations or Banking Services Obligations thereunder) (less any amounts rolled up pursuant to the terms of the Orders and/or the DIP ABL Loan Documents);

(3) Guarantees by the Borrower or a Subsidiary Guarantor that is a Debtor of Indebtedness Incurred by the Borrower or another Subsidiary Guarantor that is a Debtor in accordance with the provisions of this Agreement, *provided* that in the event such Indebtedness that is being Guaranteed is a Subordinated Obligation or a Guarantor Subordinated Obligation, then the related Guarantee shall be subordinated in right of payment to the Loan Obligations or the Guarantee, as the case may be;

(4) Indebtedness of the Borrower or any Subsidiary Guarantor that is a Debtor owing to and held by any Subsidiary, or Indebtedness of the Borrower or a Subsidiary Guarantor that is a Debtor owing to and held by the Borrower or any other Subsidiary Guarantor that is a Debtor;

(5) Indebtedness of the Borrower, any Subsidiary Guarantor or any Subsidiary created under the Pre-Petition Term Loan Documents in an aggregate principal amount not to exceed the aggregate principal amount thereunder as of the Petition Date (plus any interest or other amounts capitalized and added thereto in accordance with the Orders) (less any amounts rolled up pursuant to the terms hereof);

(6) Obligations in connection with cash management and related banking services Incurred in the ordinary course of business;

(7) Indebtedness under the Netherlands Intercompany Note as in effect on the date hereof (plus any increases to the principal amount of Indebtedness owing thereunder for capitalized interest in accordance with the terms thereof), and in all respects subject to the Netherlands Subordination Agreement;

(8) Indebtedness Incurred in respect of workers' compensation claims, self-insurance obligations, letters of credit, performance, surety and similar bonds, warranties, indemnities and completion guarantees provided by the Borrower or a Subsidiary in the ordinary course of business and in each case consistent with the Approved Budget;

(9) Indebtedness outstanding on the date hereof and listed on Schedule 7.03 and any modifications (other than modifications that shorten or accelerate the maturity of such Indebtedness or require any cash payments earlier than what is already required in respect of such Indebtedness), extensions, renewals and replacements of any such Indebtedness from time to time; provided that (i) the parties thereto shall remain the same and (ii) the aggregate amount of such Indebtedness thereunder does not increase;

(10) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, *provided, however,* that such Indebtedness is extinguished within five business days of Incurrence; and

(11) any joint and several liability (*hoofdelijke aansprakelijkheid*) pursuant to Sections 24, 39 and 43 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) as a result of any Loan Party being or becoming a member of the Netherlands Fiscal Unity.

Section 7.04 Merger, Consolidation or Sale of All or Substantially All Assets; Asset Dispositions.

(a) Neither the Borrower, nor any other Loan Party nor any Subsidiary will merge or consolidate with or into any other Person (including, in each case, pursuant to a Delaware LLC Division, but excluding, in the case of a consolidation, any Netherlands Fiscal Unity), or liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), and neither the Borrower nor any other Loan Party nor any Subsidiary shall sell, lease, convey, assign, transfer, or otherwise dispose of all or substantially all its assets to, any Person, except that:

(i) Any Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to the Borrower, in any transaction in which the Borrower is the surviving Person.

(ii) any Subsidiary may merge or consolidate with or into any Subsidiary in a transaction in which the surviving entity is a Subsidiary (and (x) if any party to such merger or consolidation is a Subsidiary Guarantor that is a Debtor, the surviving Person is a Subsidiary Guarantor that is a Debtor and (y) if any party to such merger or consolidation is a Foreign Subsidiary Guarantor and the other party is not a Loan Party, the surviving Person is the Foreign Subsidiary Guarantor); and

(iii) any Loan Party that is a Debtor (other than Holdings or the Borrower) may sell, lease, convey, assign, transfer, or otherwise dispose of all or substantially all its assets to the Borrower or to another Loan Party that is a Debtor;

provided, that in the case of clauses (i) and (ii) above, any such consolidation, merger, or transfer shall not be permitted unless it, and each Investment resulting therefrom, is also a Permitted Investment.

(b) The Borrower will not, and will not permit any of its Subsidiaries to, make any Asset Disposition of, or exclusively license, any asset, including any Capital Stock, owned by it, except:

(i) Asset Dispositions, in each case consistent with the Approved Budget, of (A) inventory and obsolete, worn out or surplus equipment in the ordinary course of business and (B) leasehold improvements to landlords pursuant to the terms of leases in respect of any Leasehold Property;

(ii) Asset Dispositions, and exclusive licenses, to any Debtor;

(iii) Asset Dispositions, and exclusive licenses, made by any Subsidiary that is not a Debtor to any Foreign Subsidiary Guarantor;

(iv) Permitted Investments;

(v) Asset Dispositions of accounts receivable in connection with the compromise or collection thereof in the ordinary course of business consistent with past practice and not as part of any accounts receivables financing transaction;

(vi) leases and licenses (or, in the case of the Netherlands Loan Guarantors, other forms of use) by third parties entered into by the Borrower or any Subsidiary prior to the Petition Date as a licensor or lessor (or, in the case of other forms of use, otherwise) in the ordinary course of business (including any licensing or sublicensing of intellectual property in the ordinary course of business), provided that such leases or licenses (or, in the case of the Netherlands Loan Guarantors, other forms of use) by third parties do not adversely affect in any material respect the value of the properties subject thereto (including the value thereof as Collateral) or interfere in any material respect with the ordinary conduct of business of the Borrower or any Subsidiary, in which respect in any event the use by third parties of (part(s) of) the real estate in the Netherlands with cadastral numbers 11206, 11242 and 11243 are deemed to be in the ordinary course of business and not to be materially interfering with the conduct of business of the Borrower or any Subsidiary; and

(vii) any casualty or other insured damage to, or the taking under the power of eminent domain or by condemnation or similar proceeding of any assets of the Borrower or any Subsidiary.

For the avoidance of doubt, notwithstanding anything to the contrary in this Section 7.04, any Domestic Subsidiary may convert from a corporation to a limited liability company so long as (1) the Administrative Agent is given ten (10) days prior written notice thereof (or such shorter amount of time as agreed to by the Administrative Agent in its sole discretion), (2) all filings reasonably requested to be made by the Administrative Agent or Required Lenders to maintain the perfection of the Administrative Agent's Liens on such converting entity's assets are made and completed, (iii) such conversion or other similar transaction does not give rise to any material Tax liability of any Loan Party and (iv) any and all new operating agreements and other organizational or governing documents of such converting entity are in form and substance satisfactory to the Administrative Agent.

Section 7.05 [Reserved].

Section 7.06 Limitation on Restricted Payments.

(a) The Borrower will not, and will not permit any of its Subsidiaries, directly or indirectly, to:

(I) declare or pay any dividend or make any distribution (whether made in cash, securities or other property) on or in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving the Borrower or any of its Subsidiaries);

(II) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Borrower or any direct or indirect parent of the Borrower held by Persons other than the Borrower or a Subsidiary (other than in exchange for Capital Stock of the Borrower);

(III) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Obligations of any Loan Party; or

(IV) make any Restricted Investment in any Person

(any such dividend, distribution, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in clauses (I) through (IV) shall be referred to herein as a "Restricted Payment").

- (b) The foregoing provisions of Section 7.06(a) hereof will not prohibit:
 - (1) Restricted Payments by any Subsidiary in respect of its Capital Stock, in each case ratably to the holders of such Capital Stock;
 - (2) [reserved];
 - (3) [reserved];
 - (4) [reserved];
 - (5) [reserved];
 - (6) [reserved];
 - (7) [reserved];
- (8) repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other convertible securities if such Capital Stock represents a portion of the exercise price thereof;
- (9) cash dividends or loans to Holdings in accordance with the Approved Budget in amounts equal to:
 - (a) the amounts required for Holdings to pay any consolidated, combined or similar federal, state or local income Taxes to the extent that such income Taxes are directly attributable to the income of the Borrower and its Subsidiaries;
 - (b) the amounts required for Holdings to pay franchise or similar Taxes and other fees required to maintain its legal existence; or
 - (c) amounts to pay corporate overhead expenses (including professional fees and expenses payable to third parties) of Holdings Incurred in the ordinary course of business (including (x) financing transactions (of debt or equity) that benefit, or are intended to benefit, the Borrower and its Subsidiaries and (y) in connection with reporting obligations under or otherwise in connection with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, this Agreement or any other agreement or instrument of Indebtedness of Holdings, the Borrower or any Subsidiary), and to pay salaries, benefits or other compensation of directors, officers, employees and consultants who perform services for Holdings, the Borrower or any Subsidiary, including with respect to any financing transaction to pay such expenses on an interim basis so long as such expenses are repaid out of the proceeds of such transaction upon completion of such transaction.

Section 7.07 Limitation on Lines of Business. The Borrower will not, and will not permit any Subsidiary to, engage in any business other than a Related Business.

Section 7.08 Transactions with Affiliates.

(a) The Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower or such Subsidiary (an “Affiliate Transaction”) unless the terms of such Affiliate Transaction are no less favorable to the Borrower or such Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction in arm’s-length dealings with a Person who is not such an Affiliate.

(b) The provisions of Section 7.08(a) hereof shall not apply to the following:

(1) any Restricted Payment (other than a Restricted Investment) permitted to be made pursuant to Section 7.06;

(2) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements and other compensation arrangements, options to purchase Capital Stock of the Borrower restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits plans, pension plans or similar plans and/or indemnity provided on behalf of current or former directors, officers and employees, in each case, to the extent in existence on the Closing Date and in accordance with the Approved Budget and approved by the Board of Directors of the Borrower;

(3) loans or advances to employees, officers or directors of the Borrower or any Subsidiary of the Borrower in the ordinary course of business consistent with past practices and constituting a Permitted Investment under clause (5) of the definition thereof;

(4) any transaction between the Borrower and a Subsidiary or between Subsidiaries and any Guarantees issued by the Borrower or a Subsidiary for the benefit of the Borrower or a Subsidiary, as the case may be, in accordance with Section 7.03 and any modification, replacement, renewal or extension thereof from time to time; provided that (i) the parties thereto shall remain the same and (ii) the aggregate amount of such transactions thereunder does not increase);

(5) the payment of reasonable and customary fees paid to, and indemnity provided on behalf of, current, former and future directors of the Borrower or any Subsidiary, in each case, in existence on the Closing Date and in accordance with the Approved Budget;

(6) [reserved];

(7) [reserved];

(8) transactions between or among the Loan Parties not involving any other Affiliate;

- (9) any contribution to the common equity capital of the Borrower;
- (10) [reserved];
- (11) payments by the Borrower or any of its Subsidiaries pursuant to any Tax sharing, allocation or similar agreement that are consistent with Section 7.06(b) and made in accordance with the Approved Budget; and
- (12) transactions permitted by, and complying with, the provisions of Section 7.04(a);

Section 7.09 Limitation on Restrictions on Distributions from Subsidiaries.

- (a) The Borrower will not, and will not permit any Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Subsidiary to:
 - (1) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Borrower or any Subsidiary (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock)
 - (2) make any loans or advances to the Borrower or any Subsidiary (it being understood that the subordination of loans or advances made to the Borrower or any Subsidiary to other Indebtedness Incurred by the Borrower or any Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or
 - (3) transfer any of its property or assets to the Borrower or any Subsidiary (it being understood that such transfers shall not include any type of transfer described in clause (1) or (2) of this Section 7.09(a)).
- (b) The restrictions in Section 7.09(a) hereof will not prohibit:
 - (1) any encumbrance or restriction pursuant to this Agreement, the Guarantees, the Collateral Documents, the Intercreditor Agreement, the Pre-Petition Term Loan Documents, the Pre-Petition ABL Documents or the DIP ABL Loan Documents, in each case, as in effect on the Closing Date, or any other agreement in effect on the Petition Date and listed on Schedule 7.09 hereto;
 - (2) [reserved];
 - (3) [reserved];
 - (4) in the case of clause (3) of Section 7.09(a), restrictions and conditions imposed by any agreement or document governing secured capital leases otherwise permitted under this Agreement or by clause (2) or (5) of the definition of "Permitted Liens";

(5) purchase money obligations or mortgage financings for property acquired in the ordinary course of business and Capitalized Lease Obligations in each case, that are otherwise permitted under this Agreement and that impose encumbrances or restrictions of the nature described in clause (3) of Section 7.09(a) solely on the property so acquired;

(6) [reserved];

(7) [reserved];

(8) net worth provisions in leases and other agreements and provisions restricting cash or other deposits in agreements entered into by the Borrower or any Subsidiary in the ordinary course of business and existing on the Petition Date;

(9) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order;

(10) [reserved];

(11) [reserved]; and

(12) encumbrances or restrictions contained in customary non-assignment provisions in leases, contracts, licenses or other agreements entered into in the ordinary course of business.

Section 7.10 Use of Proceeds. The Borrower shall not and shall not permit any of its Subsidiaries to use the proceeds of the Loans, whether directly or indirectly, (i) in violation of Section 5.13(a) or (ii) for purposes other than as set forth in Section 6.14.

Section 7.11 Impairment of Security Interests. Subject to the rights of the holders of Permitted Liens, the Borrower shall not, and shall not permit any of its Subsidiaries to take, or knowingly or negligently omit to take, any action which action or omission would or could reasonably be expected to have the result of materially impairing the security interest with respect to the Collateral for the benefit of the Collateral Agent, the Administrative Agent and the Senior Credit Parties, except as otherwise permitted under this Agreement. Any release of the Collateral in accordance with the provisions of this Agreement shall not be deemed to impair the security hereunder, and any Person may rely on such provision in delivering a certificate requesting release so long as all other provisions of this Agreement with respect to such release have been complied with. The Borrower shall not amend, modify or supplement, or permit or consent to any amendment, modification or supplement of, the Collateral Documents in any manner that would be adverse to the Lenders in any material respect, except as permitted under Section 10.01 hereof, the Security Agreement or the Intercreditor Agreement.

Section 7.12 Limitation on Sale of Capital Stock of Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, transfer, convey, sell, lease or otherwise dispose of any Voting Stock of any Subsidiary or to issue any of the Voting Stock of a Subsidiary (other than, if necessary, shares of its Voting Stock constituting directors' qualifying shares) to any Person except:

(i) to the Borrower or a Subsidiary that is a Loan Party and a Debtor; or

(ii) in compliance with Section 7.04 and immediately after giving effect to such issuance or sale, such Subsidiary either continues to be a Subsidiary or if such Subsidiary would no longer be a Subsidiary, then the Investment of the Borrower in such Person (after giving effect to such issuance or sale) would have been permitted to be made under Section 7.06 as if made on the date of such issuance or sale.

Section 7.13 [Reserved].

Section 7.14 Change of Name or Location; Change of Fiscal Year. Each Loan Party shall not (a) change its name as it appears in official filings in the state of its incorporation or organization, (b) change its chief executive office or principal place of business, (c) change the type of entity that it is (provided that any Domestic Subsidiary may convert from a corporation to a limited liability company so long as the Administrative Agent is given 10 days prior written notice thereof (or such shorter amount of time as agreed to by the Administrative Agent in its sole discretion) and all filings reasonably requested to be made by the Administrative Agent or Required Lenders to maintain the perfection of the Collateral Agent's Liens on such Domestic Subsidiary's assets are made and completed), (d) change its organization identification number, if any, issued by its state of incorporation or other organization, or (e) change its state of incorporation or organization. Such Loan Party shall not change its fiscal year which currently ends on December 31.

Section 7.15 Amendments or Waivers of Organizational Documents and Certain Agreements. Neither the Borrower nor any Subsidiary will agree to any amendment, restatement, supplement or other modification to, or waiver of any of its rights under (i)(a) any Pre-Petition Term Loan Documents, (b) any Pre-Petition ABL Loan Documents or (c) any DIP ABL Loan Documents, to the extent that, in the cause of clauses (b) and (c) above, such amendment would (v) increase the maximum principal amount of the loans or other obligations under the Pre-Petition ABL Loan Documents or DIP ABL Loan Documents to an amount greater than the maximum amount permitted hereunder, (w) increase the rate of interest (excluding any additional rate of interest provided for in the DIP ABL Loan Documents upon and during the continuance of an event of default up to 200 basis points) or fees on any of the Indebtedness under the DIP ABL Loan Documents by more than 300 basis points, (x) change to an earlier date the dates upon which payments of principal or interest on the Indebtedness are due, (y) change (in a manner that makes it adverse to, or more restrictive upon, the Loan Parties) or add any event of default or any covenant or other restrictive provision with respect to the Indebtedness under the DIP ABL Loan Documents (as in effect as of the date hereof), except to the extent such changes, additions, or restrictions mirror any change, addition or restriction made to the Loan Documents following the date hereof or (z) add an obligation of any Person (whether as borrower, guarantor or otherwise) with respect to the DIP ABL Loan Documents unless there also is an opportunity for such Person to also be added as a Guarantor in respect to the Loan Obligations, in each case, without the prior written consent of the Administrative Agent and the Required Lenders or (ii) its certificate of incorporation, by-laws, operating, management or partnership agreement or other organizational documents to the extent any such amendment, modification or waiver would be materially adverse to the Lenders.

Section 7.16 Subsidiaries. Neither the Borrower nor any of its Subsidiaries shall create, acquire or otherwise permit to exist any Subsidiary that is not in existence as of the Closing Date.

Section 7.17 Additional Bankruptcy Matters. Without the Required Lenders' prior written consent, neither the Borrower nor any Subsidiary will, directly or indirectly:

(a) enter into any agreement to return any of its inventory to any of its creditors for application against any pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims under Section 546(c) of the Bankruptcy Code or allow any creditor to take any setoff or recoupment against any of its pre-petition Indebtedness, pre-petition trade payables or other pre-petition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount applied to pre-petition Indebtedness, pre-petition trade payables and other pre-petition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed \$100,000;

(b) except for the Superpriority Claims of the DIP ABL Administrative Agent and the lenders under the DIP ABL Loan Documents and the Carve-Out, incur, create, assume, suffer to exist or permit any other superpriority administrative claim which is pari passu with or senior to the claim of the Administrative Agent or the Lenders against the Debtors;

(c) assert or prosecute any claim or cause of action against any of the Senior Credit Parties (in their capacities as such), unless such claim or cause of action is in connection with the enforcement of the Loan Documents against the Administrative Agent or the Lenders;

(d) subject to the terms of the Interim Order or the Final Order, as applicable, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Administrative Agent, the Collateral Agent or the Lenders with respect to the Collateral following the occurrence of an Event of Default (provided that any Loan Party may contest or dispute whether an Event of Default has occurred and is continuing);

(e) seek, consent to, or permit to exist, without the prior written consent of the Administrative Agent, at the direction of Required Lenders, any order granting authority to take any action that is prohibited by the terms of this Agreement, the Interim Order, the Final Order or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Interim Order, the Final Order or any of the other Loan Documents;

(f) except (i) as expressly provided or permitted hereunder (including to the extent pursuant to any "first day" or "second day" orders complying with the terms of this Agreement), (ii) with the prior consent of the Required Lenders in their sole discretion or (iii) as provided pursuant to any other order of the Bankruptcy Court acceptable to the Required Lenders, make any payment or distribution on account of any Indebtedness arising prior to the Petition Date;

(g) make any payment, or set aside funds for the purpose of making any payments, or otherwise transfer any economic value (including the payment of any fees, costs or expenses of any advisors) to any direct or indirect equity holder of the Borrower solely in its capacity as such); or

(h) without the prior written consent of the Required Lenders, make, enter into or implement any amendment, waiver, supplement or other modification to any employment agreement or employee compensation plan, in each case, to increase the benefits thereunder and solely to the extent such agreement or compensation plan relates to an Executive Officer (as defined below), or pay or cause to be paid any amount contemplated by such agreements or plans before the date on which such amount becomes due and payable pursuant to the terms of the such agreements or plans, as applicable, or pay or cause to be paid any bonus, incentive, retention, severance, change of control or termination payments pursuant to the terms of such agreements or plans, as applicable, including, without limitation, any transaction or other bonus previously awarded but unpaid (it being understood that “Executive Officer” means the Borrower’s Chief Executive Officer, Chief Operating Officer, Chief Revenue Officer, Chief Financial Officer, Chief Technology Officer or Executive Vice President and General Counsel).

Section 7.18 Budget Variance. As of any Testing Date, for the immediately preceding Testing Period, the Borrower shall not allow any variances to exist from the Approved Budget with respect to the items being tested on such Testing Date, except for any Permitted Variances.

Section 7.19 Crisa Libbey S.A. de C.V. The Loan Parties shall not permit Crisa Libbey S.A. de C.V. to have any material assets or to incur any material liabilities.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. Any of the following events referred to in any of clauses (a) through (k) inclusive of this Section 8.01 shall constitute an “Event of Default”:

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan and (ii) within three (3) Business Days after the same becomes due, any interest on any Loan, any fee or any other amount, payable hereunder or with respect to any other Loan Document.

(b) Specific Covenants.

(i) Failure by any Loan Party to comply with any of its other obligations, covenants or agreements contained in Sections 2.14, 6.01 (other than with respect to the approval of the Required DIP Lender Group required under Section 6.01(iv)), 6.02(v), 6.02(x), 6.03(i), 6.05(a) (with respect to the Borrower’s legal existence only), 6.14, 6.18, 6.19, 6.20, 6.21, 6.22, 6.23, 6.24, 6.25, and 6.26 or in Article VII.

(ii) Failure by any Loan Party to comply with any of its other obligations, covenants or agreements (other than a default referred to in Sections 8.01(a) and (b)(i) above) contained in this Agreement or any other Loan Document, and such failure shall not have been remedied within thirty (30) days after the earlier of (x) receipt by the Borrower of notice from the Administrative Agent or the Required Lenders of such failure and (y) a Responsible Officer of the Borrower obtaining knowledge thereof.

(c) [Reserved].

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made.

(e) Cross-Default.

(i) Default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Borrower or any of its Subsidiaries (or the payment of which is Guaranteed by the Borrower or any of its Subsidiaries) (other than (x) post-petition Indebtedness owed to the Borrower or a Subsidiary, whether such post-petition Indebtedness or Guarantee now exists, or is created after the Closing Date, (y) the Loan Obligations and (z) in the case of the Debtors, Indebtedness created or incurred prior to the Petition Date), which default:

- (A) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness; or
- (B) results in the acceleration of such Indebtedness prior to its maturity.

(ii) If, first arising after the Petition Date, there is (a) an “Event of Default” (as defined in the Pre-Petition Term Loan Credit Agreement), (b) an “Event of Default” (as defined in the Pre-Petition ABL Credit Agreement (as amended, supplemented, or otherwise modified by the DIP ABL Credit Agreement)), including, without limitation, as a result of Borrowers failing to pay all or any portion of the Existing Secured Obligations (as defined in the DIP ABL Credit Agreement) as when due and payable in accordance with the Order, (c) an “Event of Default” (as defined in the DIP ABL Credit Agreement) or (d) a default (after the expiration of any grace periods applicable thereto) in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party’s or any of its Subsidiaries’ Indebtedness in excess of the Threshold Amount, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party’s or its Subsidiary’s obligations thereunder where payment and enforcement thereof is not subject to a stay of proceedings in the Bankruptcy Court (provided, that, if such default has been cured, waived or otherwise no longer in existence, the Event of Default resulting from this clause (d) shall be deemed to be cured, waived and no longer in existence), in each case, other than (w) any default arising prior to the Filing Date, (x) due to Borrowers’ filing, commencement and continuation of the Bankruptcy Cases and any litigation arising therefrom, (y) due to restrictions on payments arising as a result of the Cases or (z) except with respect to the DIP ABL Credit Agreement, where payment or enforcement, acceleration or termination thereof by the holders of such obligations is and remains subject to a stay of proceedings in the Bankruptcy Case.

(f) Insolvency Proceedings, Etc. (1) Any Subsidiary that is not a Debtor, pursuant to or within the meaning of any Debtor Relief Law:

- (i) commences proceedings to be adjudicated bankrupt or insolvent;
- (ii) consents to the institution of bankruptcy or Insolvency Proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Debtor Relief Law;
- (iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator 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) applies for a suspension of payments (*sursceance van betaling*) or a *concurso mercantil* or insolvency proceeding pursuant to Article 2166 of the Mexican Federal Civil Code (*Código Civil Federal*) or its correlative provisions of the Civil Codes of the States that comprises Mexico or Article 9 of the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*) (or any successor provision);
- (vi) generally is not paying its debts as they become due; or
- (vii) a court of competent jurisdiction enters an order or decree under any Debtor Relief Law that:
 - (A) is for relief against such Subsidiary that is not a Debtor, in a proceeding in which such Subsidiary is to be adjudicated bankrupt or insolvent;
 - (B) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Subsidiary that is not a Debtor, or for all or substantially all of the property of such Subsidiary; or
 - (C) orders the liquidation of such Subsidiary that is not a Debtor;

and the order or decree remains unstayed and in effect for sixty (60) consecutive days.

(g) Inability to Pay Debts; Attachment. (i) Any Subsidiary that is not a Debtor becomes unable or admits in writing its inability or fails generally to pay its debts in excess of the Threshold Amount as they become due (which, for the avoidance of doubt, does not include the filing of any notice for the postponement of Tax liability payments, including the actual temporary postponement of such Taxes, in accordance with the decree of the Dutch State Secretary of Finance of 22 April 2020 with nr. 2020-8499 (as currently replaced by the decree of 6 May 2020 with nr. 2020-9594) or any other future decree or arrangement through which the aforementioned decree is amended), or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the Loan Parties, taken as a whole, and is not released, vacated or fully bonded within sixty (60) days after its issue or levy.

(h) Judgments.

(i) Failure by the Borrower or any Subsidiary to pay final judgments arising following the Petition Date and related to post-petition administrative expenses aggregating in excess of the Threshold Amount (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of sixty (60) days.

(ii) One or more judgments for the payment of money in an aggregate amount in excess of the Threshold Amount shall be rendered against any Loan Party, any Subsidiary of any Loan Party or any combination thereof to the extent not covered by insurance or indemnity for which the insurance company or indemnitor has not disputed coverage and the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Subsidiary of any Loan Party with a value in excess of the Threshold Amount to enforce any such judgment or any Loan Party or any Subsidiary of any Loan Party shall fail within 30 days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued.

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which, when taken together with all other ERISA Events, has resulted or could reasonably be expected to result in liability of any Loan Party in an aggregate amount which could reasonably be expected to result in a Material Adverse Effect, (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA which could reasonably be expected to result in a Material Adverse Effect, or (iii) a termination, withdrawal or noncompliance with applicable Law or plan terms or termination, withdrawal or other event similar to an ERISA Event occurs with respect to a Foreign Plan that, when taken together with other such events, could reasonably be expected to result in a Material Adverse Effect.

(j) Invalidity of Loan Documents. Any material provision of any Loan Document (including, without limitation, any Guarantee provided in any Loan Guaranty), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04) or as a result of acts or omissions by the Administrative Agent or any Lender or the satisfaction in full of all the Loan Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document (other than as a result of repayment in full of the Loan Obligations and termination of the New Money DIP Commitments), or purports in writing to revoke or rescind any Loan Document.

(k) Collateral Documents. With respect to any Collateral, any of the Collateral Documents ceases to be in full force and effect, or any of the Collateral Documents ceases to give the Lenders the Liens on the Collateral purported to be created thereby, or any of the Collateral Documents is declared null and void or the Borrower or any Subsidiary denies in writing that it has any further liability under any Collateral Document or gives written notice to such effect (in each case, other than in accordance with the terms of this Agreement or the terms of the Collateral Documents).

(l) Change of Control. A Change of Control shall occur other than in accordance with the Acceptable Plan.

(m) The Cases; Bankruptcy Matters.

(i) Any of the Cases of the Debtors shall be converted to a case under Chapter 7 of the Bankruptcy Code;

(ii) a trustee, responsible officer or an examiner (other than a fee examiner) with expanded powers is appointed or elected in any of the Cases, or the Bankruptcy Court shall have entered an order providing for such appointment;

(iii) an order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral, or borrowing under this Agreement, by the Debtors and the Debtors shall have not obtained use of Cash Collateral pursuant to an order consented to by, and in form and substance acceptable to, the Required Lenders;

(iv) any Loan Party or any of its Subsidiaries, or any person claiming by or through any Loan Party or any of its Subsidiaries, with any Loan Party's or any Subsidiary's consent, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against (A) the Administrative Agent, the Collateral Agent or any of the Lenders relating to the DIP Term Facility or (B) the administrative agent, the collateral agent or any lender relating to the Pre-Petition Term Loan Credit Agreement;

(v) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing (i) any claims or charges, other than in respect of the DIP Term Facility and the Carve-Out or as otherwise permitted under the applicable Loan Documents or the Orders, entitled to superpriority administrative expense claim status in any Case pursuant to Section 364(c)(1) of the Bankruptcy Code that are pari passu with or senior to the claims of the Agents and the Lenders under the DIP Term Facility, or there shall arise or be granted by the Bankruptcy Court any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out), or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests provided for herein securing the Obligations hereunder, except, in each case, as expressly provided in the Loan Documents or in the Order then in effect (but only in the event specifically consented to by the Required Lenders (or the Administrative Agent with the consent of the Required Lenders));

(vi) the Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest) to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of any of the Loan Parties which have a value in excess of \$100,000 in the aggregate or (ii) permit other actions that would have a Material Adverse Effect on the Loan Parties or their estates (taken as a whole);

(vii) an order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying, vacating or otherwise amending, supplementing or modifying the Interim Order or the Final Order, without the prior written consent of the Required Lenders (and, with respect to any provision that affects the rights or duties of any Agent, the Administrative Agent), or a Loan Party shall apply for the authority to do so;

(viii) the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date) shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Required Lenders (or the Administrative Agent with the consent of the Required Lenders);

(ix) an order shall have been entered by the Bankruptcy Court avoiding or requiring disgorgement by any Agent or any of the Lenders of any amounts received in respect of the Obligations;

(x) an order shall have been entered by the Bankruptcy Court terminating or modifying the exclusive right of any Debtor to file a Chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders (or the Administrative Agent with the consent of the Required Lenders);

(xi) an order shall have been entered by the Bankruptcy Court providing for a change in venue with respect to the Cases;

(xii) subject to any cure or notice periods set forth in the applicable order, any of the Loan Parties shall fail to comply with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date);

(xiii) other than with respect to the Carve-Out, an order in the Cases shall be entered charging any of the Collateral (as defined herein and in the Pre-Petition Term Loan Credit Agreement) under Section 506(c) of the Bankruptcy Code against the Lenders or the lenders under the Pre-Petition Term Loan Credit Agreement, or the commencement of other actions by the Debtors that is materially adverse to Administrative Agent, the Collateral Agent or the Lenders, or the administrative agent, the collateral agent or the lenders under the Pre-Petition Term Loan Credit Agreement or their respective rights and remedies under the DIP Term Facility in any of the Cases or inconsistent with any of the Loan Documents;

(xiv) any order shall be entered which dismisses any of the Cases of the Debtors and which order does not provide for termination of the Commitments and indefeasible payment in full of the Loan Obligations under the Loan Documents (other than contingent indemnification obligations not yet due and payable) and continuation of the Liens with respect thereto until the effectiveness thereof, or any of the Loan Parties and their Subsidiaries shall seek, support or fail to contest in good faith the entry of any such order;

(xv) any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in this Section 8.01 or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal;

(xvi) other than the lien subordination permitted pursuant to the Carve-Out, any Loan Party or any Subsidiary thereof shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding seeking, or otherwise consenting to (i) the invalidation, subordination or other challenging of the Superpriority Claims and Liens granted to secure the Loan Obligations or any other rights granted to the Administrative Agent, the Collateral Agent and the Lenders in the Orders or this Agreement or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Collateral;

(xvii) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Administrative Agent or any Lender with respect to the Loan Obligations or the administrative agent, the collateral agent or any lender under the Pre-Petition Term Loan Credit Agreement with respect to the obligations thereunder, other than to challenge the occurrence of a Default or Event of Default;

(xviii) without the consent of the Required Lenders, the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by the Bankruptcy Court approving) adequate protection to any pre-petition agent, trustee or lender that is inconsistent with the Interim Order (prior to the Final Order Entry Date) or the Final Order (on and after the Final Order Entry Date);

(xix) without the consent of the Required Lenders, the entry of any order by the Bankruptcy Court authorizing any party in interest to reclaim any of the Collateral, granting any party in interest relief from the automatic stay with respect to the Collateral, or requiring that the Loan Parties turnover any of the Collateral, in each case prior to full, final and indefeasible repayment of all Loan Obligations;

(xx) without the consent of the Required Lenders, entry of any order that would restrict or impair (A) the rights and remedies of the Agent and/or Lenders against the Loan Parties as provided in this Agreement or the Interim or Final Orders, or (B) the exercise of such rights or remedies by any of the Agent or Lenders in accordance with this Agreement, the Interim Order or the Final Order;

(xxi) without the consent of the Required Lenders, the Loan Parties shall have amended, modified or assigned any of their material agreements including, without limitation, the Pre-Petition Term Loan Documents;

(xxii) without the Required Lenders' consent, the entry of any order by the Bankruptcy Court granting, or the filing by any Loan Party or any of its Subsidiaries of any motion or other request with the Bankruptcy Court (in each case, other than the Orders and motions seeking entry thereof or permitted amendments or modifications thereto) seeking, authority to use any cash proceeds of any of the Collateral without the Required Lenders' consent or to obtain any financing under section 364 of the Bankruptcy Code other than the facility hereunder unless such motion or order contemplates payment in full in cash of the Obligations (other than, solely to the extent agreed in writing by the Required Roll-Up Lenders in their sole discretion, the Obligations solely in respect of the Roll-Up Loans) immediately upon consummation of the transactions contemplated thereby;

(xxiii) any Loan Party shall file any motion seeking authority to consummate a sale of assets of the Loan Parties or the Collateral having a value in excess of \$100,000 outside the ordinary course of business and not otherwise permitted hereunder;

(xxiv) the filing by any of the Loan Parties of, or the entry of an order approving, a plan of reorganization under Chapter 11 of the Bankruptcy Code other than an Acceptable Plan;

(xxv) the filing by any of the Loan Parties of, or the entry of an order approving, a disclosure statement related to a plan of reorganization under Chapter 11 of the Bankruptcy Code other than an Acceptable Disclosure Statement;

(xxvi) the entry of an order approving a plan of reorganization under Chapter 11 of the Bankruptcy Code in any of the Cases other than an Acceptable Confirmation Order;

(xxvii) the entry of an order approving a disclosure statement related to a plan of reorganization under Chapter 11 of the Bankruptcy Code other than an Acceptable Disclosure Statement Order;

(xxviii) if any Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of the business affairs of the Loan Parties and their Subsidiaries, taken as a whole, which could reasonably be expected to have a Material Adverse Effect; provided, that the Loan Parties shall have five (5) Business Days after the entry of such an order to obtain a court order vacating, staying or otherwise obtaining relief from the Bankruptcy Court or another court to address any such court order;

(xxix) any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness other than payments in respect of the repayment of the Indebtedness outstanding under the Pre-Petition ABL Loan Documents or the Pre-Petition Term Loan Documents or as otherwise permitted under this Agreement, in each case, to the extent authorized by one or more "first day" orders or "second day" orders, the Interim Order or the Final Order (which in each case shall be acceptable to the Required DIP Lender Group) and in compliance with the Approved Budget; or

(xxx) without the Required Lenders' consent, any Loan Party or any Subsidiary thereof shall file any motion or other request with the Bankruptcy Court seeking (i) to grant or impose, under section 364 of the Bankruptcy Code or otherwise, liens or security interests in any Collateral, whether senior, equal or subordinate to the Collateral Agent's liens and security interests (other than with respect to the Carve-Out); (ii) to use, or seek to use, Cash Collateral; (iii) to obtain any financing under section 364 of the Bankruptcy Code other than the facility hereunder unless such motion or order contemplates payment in full in cash of the Loan Obligations immediately upon consummation of the transactions contemplated thereby; or (iv) to modify or affect any of the rights of the Agents, or the Lenders under the Orders or the Loan Documents, by any order entered in the Cases.

- (n) Permitted Variances. Permitted Variances under the Approved Budget are exceeded for any relevant Test Period.

Section 8.02 Remedies Upon Event of Default. Subject to the terms and conditions of the Orders, if any Event of Default occurs and is continuing, the Administrative Agent may and, at the written request of the Required Lenders, shall take any or all of the following actions:

(i) declare the Commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower and each other Loan Party;

(iii) terminate the DIP Term Facility and any Loan Documents as to any future liability or obligation of the Senior Credit Parties hereunder, but without affecting any of the Loan Obligations or the Liens securing the Loan Obligations;

(iv) invoke the right to charge interest at the Default Rate;

(v) deliver a Carve-Out Trigger Notice invoking the Post Carve-Out Cap as of the Carve-Out Trigger Date; and

(vi) exercise (or cause the Collateral Agent to exercise) on behalf of itself and the Senior Credit Parties all rights and remedies available to the Agents and the Senior Credit Parties under the Loan Documents or applicable Law, including, without limitation, the enforcement of any and all Liens created pursuant to the Collateral Documents.

Notwithstanding anything to the contrary herein, subject to the provisions of the Interim Order (and, when entered, the Final Order), (x) with respect to enforcement of Liens or remedies with respect to Collateral, the Collateral Agent shall provide the Borrower three (3) Business Days' notice prior to taking such action (the "Remedies Notice Period"), and (y) after expiration of the Remedies Notice Period, the Agents shall, at the request of, or may, with the consent of, the Required Lenders, (x) terminate the consensual use of Cash Collateral and (y) exercise all other rights and remedies provided for in this Agreement, the Collateral Documents, the Orders and under applicable law; provided, however, that the Agent may take the actions set forth in Sections 8.02(i), (ii), (iii), (iv) and (v) of this Agreement immediately, and without reference to the Remedies Notice Period, upon the occurrence and during the continuance of an Event of Default. During the Remedies Notice Period, the Debtors may use Cash Collateral solely in the ordinary course of business, consistent with past practices, subject to the Approved Budget, including for the purpose of funding the Carve-Out. During the Remedies Notice Period, any party in interest shall be entitled to seek an emergency hearing with the Bankruptcy Court with respect to any attempt by the Administrative Agent, the Collateral or any Lender to exercise rights and/or remedies.

Section 8.03 [Reserved].

Section 8.04 Application of Funds.

(a) After the exercise of remedies provided for in this Article VIII (or after the Loans have automatically become immediately due and payable), any amounts received under any Collateral Documents, and all funds credited to the Funding Account, shall, subject to the Carve-Out, be applied by the Administrative Agent as follows, subject to the terms of the Intercreditor Agreement:

first, to pay that portion of the Loan Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agents) then due and payable to the Agents in their respective capacities as such, until payment in full of all such fees shall have been made;

second, to pay that portion of the Loan Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lenders, ratably among them in proportion to the amounts described in this clause *second* payable to them;

third, to pay ratably all accrued and unpaid interest on the Loans, until payment in full of all such interest shall have been made;

fourth, to pay the unpaid principal amount of the Loans ratably, until payment in full of the principal of all Loans shall have been made;

fifth, to pay all other Loan Obligations ratably, until payment in full of all such other Loan Obligations shall have been made; and

finally, to pay to the Borrower or the relevant Loan Party, or as a court of competent jurisdiction may direct, any surplus then remaining (including from the proceeds of the Collateral owned by it);

provided that Collateral owned by a Guarantor and any proceeds thereof shall be applied pursuant to the foregoing clauses *first, second, third, fourth* and *fifth* only to the extent permitted by the limitation in Section 2.1 of its Loan Guaranty. The Administrative Agent may make such distributions hereunder in cash or in kind or, on a ratable basis, in any combination thereof.

(b) In making the payments and allocations required by this Section 8.04, the Administrative Agent will be entitled to rely on information from (i) its own records for information as to the Senior Credit Parties, their Loan Obligations and actions taken by them, (ii) any Senior Credit Party for information as to its Loan Obligations and actions taken by it, to the extent that the Administrative Agent has not obtained such information from its own records, and (iii) the Borrower, to the extent that the Administrative Agent has not obtained information from the foregoing sources. All distributions made by the Administrative Agent pursuant to this Section 8.04 shall be final (except in the event of manifest error) and the Administrative Agent shall have no duty to inquire as to the application by any Senior Credit Party of any amount distributed to it.

ARTICLE IX

AGENTS

Section 9.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Cortland as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents and authorizes Cortland to act as the Administrative Agent and the Collateral Agent in accordance with the terms hereof and of the other Loan Documents (including the Collateral Documents) and to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent or the Collateral Agent, as applicable, by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents, sub-agents, employees, and other Related Parties. Each such Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and in the other Loan Documents, as applicable. Other than Sections 9.06 and 9.10, the provisions of this Section 9 are solely for the benefit of the Agents, the Lenders, and no Loan Party shall have any rights as a third party beneficiary of any such provisions. In performing its functions and duties hereunder, no Agent assumes, and shall not be deemed to have assumed, any obligation towards or relationship of agency or trust with or for the Borrower or any Subsidiary to act as the Administrative Agent or the Collateral Agent. In addition, for Mexican law purposes, each Lender hereby grants to the Administrative Agent a *comisión mercantil con representación* in accordance with Articles 273, 274 and any other applicable Articles of the Commerce Code of Mexico (*Código de Comercio*) to act on its behalf as its agent in connection with this Agreement and the Loan Documents, and authorizes the Administrative Agent and the Collateral Agent to enter into the Mexico Collateral Documents and to hold the Liens granted to it under such documents acting on behalf of itself and for the benefit of the Lenders under this Agreement and each Lender to secure any Secured Obligations. Furthermore, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to delegate the above mentioned *comisión mercantil con representación* pursuant to Article 280 and any other applicable Articles of the Commerce Code of Mexico (*Código de Comercio*) to the extent permitted by and under the terms provided in the Intercreditor Agreement and any of the Loan Documents.

(b) Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Collateral Agent to (i) execute and deliver each Collateral Document and the Intercreditor Agreement and (ii) execute any and all documents (including releases) with respect to the Collateral and the rights of the Senior Credit Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents. The Collateral Agent, as "Collateral Agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to the Collateral Documents for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Senior Credit Parties (under and as defined in the US Security Agreement) required pursuant to the terms of the Collateral Documents, shall be entitled to the benefits of all provisions of this Article IX and Article X (as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement and the Collateral Documents, the Collateral Agent shall not have any duties or responsibilities hereunder or thereunder nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with the Administrative Agent, the Lenders or any Loan Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement and the Collateral Documents or otherwise exist against the Collateral Agent. Except as expressly otherwise provided in this Agreement or the other Loan Documents, the Collateral Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which the Collateral Agent is expressly entitled to take or assert under this Agreement and the other Loan Documents, including the exercise of remedies pursuant to Article VIII, and any action so taken or not taken shall be deemed consented to by the Administrative Agent and the Lenders.

(c) If at any time or times the Administrative Agent shall receive (i) by payment, foreclosure, set-off or otherwise, any proceeds of Collateral or any payments with respect to the Loan Obligations arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by the Administrative Agent from the Collateral Agent pursuant to the terms of this Agreement or the other Loan Documents, or (ii) payments from the Collateral Agent in excess of the amount required to be paid to the Administrative Agent pursuant to Article VIII, the Administrative Agent shall promptly turn the same over to the Collateral Agent, in kind, and with such endorsements as may be required to negotiate the same to the Collateral Agent.

(d) The Collateral Agent is the Administrative Agent's and each Lender's agent for the purpose of perfecting the Administrative Agent's and Lenders' security interest in assets which, in accordance with Article 9 of the Uniform Commercial Code or other applicable law, can be perfected only by possession. Should the Administrative Agent or any Lender obtain possession of any such Collateral, upon request from the Borrower, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

(e) Portugal Collateral.

(i) Subject to paragraph (vi) below, each of the other Senior Credit Parties authorizes the Collateral Agent to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Portugal Collateral Document and this Agreement together with any other incidental rights, powers, authorities and discretions (and, in particular, as "*mandatário com representação*" in accordance with, *inter alia*, art. 1178 of the Portuguese Civil Code (*Código Civil*) to the extent the relevant Portugal Security Document is governed by Portuguese law) under and in connection with the Portugal Security Documents and this Agreement. The Collateral Agent acting in its name and behalf and for its benefit, and in the name, behalf and for the benefit of the other Senior Credit Parties, can, *inter alia*, (i) execute all types of security or guarantees granted in connection with the Loan Documents as well as amend and cancel them, and (ii) claim and enforce debts, exercise against the security providers in accordance with the provisions set forth in the Portugal Collateral Documents and Loan Documents, *inter alia*, powers and duties relating to the enforcement of security and guarantees, the claiming of amounts owed under the Loan Documents and the application of proceeds obtained from such enforcement and claims in accordance with the provisions of this Agreement.

(ii) For the avoidance of doubt, the security interests created under the Portugal Security Document governed by Portuguese law shall not be held by the Collateral Agent in trust but as agent ("*mandatário com representação*") acting for itself and on behalf and for the benefit of the remaining Senior Credit Parties in accordance with the relevant provisions of the Portugal Collateral Documents; in line with the foregoing and solely for the purposes of taking and/or enforcing the Portugal Collateral contemplated by the Portugal Collateral Documents to be entered into by the Portugal Loan Guarantor incorporated and established in Portugal, the Collateral Agent shall further be the joint and several creditor ("*credor solidário*") in accordance with, *inter alia*, art. 528 of the Portuguese Civil Code (*Código Civil*), together with each other Senior Credit Parties, in relation to any and all liabilities towards such other Senior Credit Parties.

(iii) Subject to paragraph (vi) below, each of the other Senior Credit Parties authorizes the Collateral Agent to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Portugal Collateral Documents and this Agreement together with any other incidental rights, powers, authorities and discretions.

(iv) Subject to paragraph (iv) below and for the avoidance of doubt, each Senior Credit Party (other than the Collateral Agent) irrevocably and unconditionally appoints the Collateral Agent to act as its agent (*mandatário com representação*) for the purpose of executing any Portuguese Collateral Documents and accepting, managing and enforcing the relevant security interests on its behalf, in accordance with the relevant provisions of the Portugal Collateral Documents.

(v) Subject to paragraph (vi) below, each Senior Credit Party (other than the Collateral Agent) confirms its approval of the Portugal Collateral Documents creating or expressed to be creating security interests benefiting to it and any security interests created or to be created pursuant thereto.

(vi) To the extent that any Senior Credit Party is unable to make the appointments in this clause (e) and under paragraphs (i) and (ii) above by entry into this Agreement (including via any Assignment and Assumption or joinder to this Agreement) such Senior Credit Party shall, by the date of this Agreement (or the date of the relevant Assignment and Assumption or joinder to this Agreement) enter into a power of attorney appointing the Collateral Agent to act on its behalf in connection with the Loan Documents and/or the Portugal Collateral Documents, as applicable.

(vii) Each Senior Credit Party (other than the Collateral Agent) authorizes the Collateral Agent, for the purposes of this clause (e) and in accordance with Article 261 of the Portuguese Civil Code (*Código Civil*), to enter into agreements with itself (*negócios consigo mesmo*).

(viii) The Collateral Agent hereby accepts its appointment as agent (*mandatário com representação*) pursuant to this clause (e).

Section 9.02 Rights as a Lender. The Person serving as the Administrative Agent and Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender (if applicable) as any other Lender and may exercise the same as though it were not the Administrative Agent and the Collateral Agent and the term “Lender” or “Lenders” shall, if applicable and unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent or Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent and the Collateral Agent hereunder and without any duty to account therefor to the Lenders. For the avoidance of doubt, Cortland is not a Lender.

Section 9.03 Exculpatory Provisions.

No Agent nor any of its Related Parties shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, each of the Agents and each of their Related Parties:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 10.01) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction;

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Collateral Agent or any of its respective Affiliates in any capacity; and

(iv) shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error, in which case, the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default as such is given to the Administrative Agent by the Borrower or a Lender.

Each Agent shall be entitled to refrain from the taking of any action (including the failure to take an action) in connection herewith or with any of the other Loan Documents or from the exercise of any power, discretion or authority (including the making of any requests, determinations, judgments, calculations or the expression of any satisfaction or approval) vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from the Required Lenders (or such other Lenders as may be required, or as such Agent shall believe in good faith to be required, to give such instructions under the circumstances as provided in Sections 8.02 and 10.01) and upon receipt of such instructions from the Required Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions; provided that such Agent shall not be required to take any action that, in its opinion, could expose such Agent to liability or be contrary to any Loan Document or applicable law, including any action that may be in violation of the automatic stay under any Debtor Relief Laws or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law.

No Agent be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the value or the sufficiency of any Collateral or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or the Collateral Agent, as applicable.

Section 9.04 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 Delegation of Duties. The Administrative Agent or the Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent or the Collateral Agent, as applicable. The Administrative Agent or the Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory, indemnification and other provisions of this Article and Section 10.04 hereof shall apply to any such sub-agent and to the Related Parties of the Administrative Agent or the Collateral Agent, as applicable, and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent or Collateral Agent. No Agent shall be responsible for the negligence or misconduct of any sub-agent appointed by it except to the extent that a court of competent jurisdiction determines in a final, non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agent. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by any Agent, (i) such sub-agent shall be a third party beneficiary under the exculpatory, indemnification and other provisions of this Article and Section 10.04 hereof and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such provisions directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders and (ii) such sub-agent shall only have obligations to such Agent, and not to any Loan Party, any Lender or any other Person, and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent.

Section 9.06 Resignation of Agents. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a 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, then the retiring Administrative Agent may (but shall not be required) on behalf of the Lenders appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if no successor Administrative Agent has been appointed by the 30th day after the resigning Administrative Agent gave notice of its resignation, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations to be made by, to or through the Administrative Agent shall instead be made by or to each Lender, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX 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 Administrative Agent. Any resignation by the Administrative Agent under this Section 9.06 shall also constitute a resignation by the entity serving as Administrative Agent in its capacity as Collateral Agent (and the provisions of this Section 9.06 shall apply equally to such entity in its capacity as Collateral Agent).

Section 9.07 Lenders' Acknowledgments.

(a) Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender acknowledges and agrees that Cortland or one or more of its Affiliates will be (i) acting as the administrative agent and collateral agent under the Pre-Petition Term Loan Credit Agreement, and, in its capacity as the collateral agent under the Pre-Petition Term Loan Credit Agreement, is a party to the Intercreditor Agreement and (ii) acting as the Specified Mexico Collateral Agent (as defined in the Intercreditor Agreement) under the Intercreditor Agreement and under the Specified Mexico Collateral Documents (as defined in the Intercreditor Agreement). Each Lender and Senior Credit Party waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against Cortland or any of its Affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating to any such conflict of interest.

Section 9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Agents shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, Collateral Agent or, if applicable, a Lender hereunder. Without limiting the foregoing, none of the Agents in their respective capacities as such, shall by reason of any Loan Document, have any fiduciary relationship in respect of any Loan Party, Lender or any other Person (regardless of whether or not a Default or an Event of Default has occurred), it being understood and agreed that the use of the term "agent" (or any other similar term) in this Agreement or any other Loan Document with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law, and that such term is used as a matter of market custom; and nothing herein or in any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or of any of the other Loan Documents except as expressly set forth herein or therein. Without limiting the generality of the foregoing, no Agent shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, or be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

Section 9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws with respect to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

- (a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;
- (b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Administrative Agent, the Collateral Agent and any other Senior Credit Party (including any claim under Sections 2.05, 2.07, 2.08, 2.09, 2.10, 2.12, 3.04, 3.05, and 10.04) allowed in such judicial proceeding; and
- (c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender and each other Senior Credit Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders or the other Senior Credit Parties, to pay to the Administrative Agent any amount due to the Administrative Agent, in such capacity or in its capacity as the Collateral Agent, or to its Related Parties under the Loan Documents (including under Section 10.04). To the extent that the payment of any such amounts due to the Administrative Agent, in such capacity or in its capacity as the Collateral Agent, or to its Related Parties 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 property that the Lenders, or the other Senior Credit Parties may be entitled to receive in such proceeding, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender, or to vote in respect of the claim of any Lender in any such proceeding.

Section 9.10 Collateral and Loan Guaranty Matters. Each of the Lenders irrevocably agrees to (and authorizes each Agent to act in accordance with) the following subject to, to the extent required, authorization of the Bankruptcy Court:

(a) Release of Collateral and Loan Guaranty. Subject to Section 9.10(b), Collateral may be released from the Lien and security interest created by the Collateral Documents and any Loan Party may be released from its Loan Guaranty at any time or from time to time in accordance with the provisions of the Loan Documents or as provided hereby. The Borrower and the Guarantors will be entitled to a release of property and other assets included in the Collateral from the Liens securing the Loan Obligations, and the Administrative Agent shall release, or instruct the Collateral Agent to release, as applicable, the same from such Liens at the Borrower's sole cost and expense, under one or more of the following circumstances:

- (1) to enable the disposition of such property or assets (other than to the Borrower or a Guarantor) to the extent not prohibited under Section 7.04;
- (2) in the case of a Guarantor that is released from its Loan Guaranty with respect to all of the Loan Obligations in accordance with the terms of such Loan Guaranty, the release of the property and assets of such Guarantor;
- (3) pursuant to an amendment or waiver in accordance with Section 10.01 hereof; or
- (4) upon payment in full of the principal of, together with accrued and unpaid interest (including post-petition interest, if any) on, all of the Loans and all other Loan Obligations that are due and payable at or prior to the time such principal, together with accrued and unpaid interest are paid and all Commitments have terminated.

(b) Release Documentation. The Administrative Agent shall, or shall cause the Collateral Agent, to execute, deliver or acknowledge (at the Borrower's expense) such instruments or releases to evidence the release of any Collateral or any Loan Guaranty permitted to be released pursuant to this Agreement or any other Loan Documents (including any Collateral Documents). Any execution and delivery of documents pursuant to this Section 9.10 shall be without recourse to or warranty by the Administrative Agent or the Collateral Agent. Neither the Administrative Agent nor the Collateral Agent shall be liable for any such release undertaken in good faith.

(c) [Reserved].

(d) Right to Realize on Collateral and Enforce Loan Guaranty. Notwithstanding anything contained in any of the Loan Documents to the contrary, the Loan Parties, the Administrative Agent, the Collateral Agent and each Senior Credit Party hereby agree that (i) except with respect to the exercise of set-off rights of any Lender or with respect to a Senior Credit Party's right to file a proof of claim in any proceeding under the Debtor Relief Laws, no Senior Credit Party shall have any right individually to realize upon any of the Collateral or to enforce any Loan Guaranty purported to be created under the Loan Documents, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Senior Credit Parties in accordance with the terms thereof and that all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent for the benefit of the Senior Credit Parties in accordance with the terms thereof and (ii) in the event of a foreclosure, exercise of a power of sale or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or any other applicable section of the Bankruptcy Code, any analogous Debtor Relief Laws or any law relating to the granting or perfection of security interests), the Collateral Agent (or any Lender, except with respect to a "credit bid" pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or any other applicable section of the Bankruptcy Code any analogous Debtor Relief Laws or any law relating to the granting or perfection of security interests) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of the Senior Credit Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from the Required Lenders (subject to procedures reasonably satisfactory to the Collateral Agent), for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold or licensed at any such sale or other disposition, to use and apply any of the Loan Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale or other disposition. In connection with any such bid referred to in clause (iii) above, (A) the Collateral Agent shall be authorized to form one or more acquisition vehicles to make a bid, (B) the Collateral Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Collateral Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 10.05(a)), (C) the Collateral Agent shall be authorized to assign the relevant Loan Obligations to any such acquisition vehicle pro rata among the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Loan Obligations to be credit bid, all without the need for any Senior Credit Party or acquisition vehicle to take any further action, and (D) to the extent that Loan Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Loan Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Loan Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Loan Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Senior Credit Party or any acquisition vehicle to take any further action.

Section 9.11 Withholding Tax. To the extent required by any applicable Law, the Administrative Agent may withhold from any payment to any Lender an amount equal to any applicable withholding Tax. If the IRS or any Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from any amount paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless the Administrative Agent within ten (10) days after demand therefor (to the extent that the Administrative Agent has not already been reimbursed by the Loan Parties and without limiting or expanding the obligation of the Loan Parties to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties, additions to Tax or interest thereon, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. In addition (and without duplication of the indemnity obligation described in the foregoing sentence), each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (a) any Indemnified Taxes and Other Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (b) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability described in this Section 9.11 that is delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 9.11. The agreements in this Section 9.11 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Loans and the repayment, satisfaction or discharge of all Obligations under this Agreement. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender any refund of Taxes withheld or deducted from funds paid for the account of such Lender.

ARTICLE X

MISCELLANEOUS

Section 10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Loan Parties, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that (w) any amendment or waiver to the Agent Fee Letter, or waiver of any rights or privileges thereunder, shall only require the consent of the Borrower and the Agents, (x) the Administrative Agent and the Borrower may, without the consent of the Lenders, amend, modify or supplement this Agreement and any other Loan Document to cure any ambiguity, typographical error, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Agent or any Lender, (y) any amendment, waiver or consent to the Intercreditor Agreement or any Junior Lien Intercreditor Agreement shall only require the consent of any Loan Party to the extent expressly set forth therein and (z) no such amendment, waiver or consent shall:

- (i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood that a waiver of any condition precedent or the waiver of any Default or mandatory prepayment shall not constitute an extension or increase of any Commitment of any Lender);
- (ii) extend the scheduled final maturity date of any Loan without the written consent of each Lender affected thereby;
- (iii) postpone any date fixed by this Agreement or any other Loan Document for any scheduled payment of principal, interest or fees due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;
- (iv) reduce the principal of, or the rate of interest specified herein on, any Loan or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(v) change (A) Section 8.04 in a manner that would alter the application of payments required thereby without the written consent of each Lender affected thereby or (B) the order of application of any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 2.05(b), in any manner that adversely affects the Lenders without the written consent of each Lender adversely affected thereby;

(vi) change any provision of this Section 10.01 or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender adversely affected thereby;

(vii) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender, in each case except as expressly provided in the Loan Documents and except in connection with a “credit bid” undertaken by the Collateral Agent at the direction of the Required Lenders pursuant to section 363(k), section 1129(b)(2)(a)(ii) or any other section of the Bankruptcy Code or any other sale or other disposition of assets in connection with other Debtor Relief Laws or an enforcement action with respect to the Collateral permitted pursuant to the Loan Documents;

(viii) release all or substantially all of the value of the Loan Guaranty, without the written consent of each Lender;

(ix) amend, waive or otherwise modify the portion of the definition of “Interest Period” that provides for one, two or three month intervals to automatically allow intervals in excess of three (3) months, without the written consent of each Lender affected thereby;

(x) amend the term “Pro Rata Share” or waive, amend or otherwise modify Section 2.13 or Section 8.04 hereof (or any comparable provision of any other Loan Document) in a manner that would alter the pro rata sharing of payments required thereby; or

(xi) except as provided by operation of law and otherwise permitted hereunder, amend or modify the Superpriority Claims status of the Loan Obligations under the Orders or under any Loan Document;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (ii) Section 10.06(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Collateral Agent in addition to the Lenders required above, affect the rights or duties of the Collateral Agent under this Agreement or any other Loan Document; and (iv) the consent of Lenders holding more than 50% of any Class of Commitments or Loans shall be required with respect to any amendment that by its terms adversely affects the rights of such Class in respect of payments or Collateral hereunder in a manner different than such amendment affects other Classes.

Notwithstanding anything to the contrary contained in this Section 10.01, Guarantees, collateral security documents and related documents executed by Loan Parties or any Subsidiaries of the Borrower in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended, supplemented and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment, supplement or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure any ambiguity, typographical error, defect or inconsistency or (iii) to cause such Guarantee, collateral security document or other document to be consistent with this Agreement and the other Loan Documents.

Notwithstanding anything to the contrary contained in this Section 10.01 or otherwise, for purposes of determining the treatment of the Roll-Up Loans in any plan of reorganization or liquidation of the Debtors, such determination shall be made by the Required Roll-Up Lenders and, so long as all Lenders are treated ratably with respect to their Roll-Up Loans, all Lenders hereby agree to approve, and shall be subject to, any such treatment of the Roll-Up Loans as determined by the Required Roll-Up Lenders.

Section 10.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except as provided in subsection (b) below, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows:

- (i) if to the Borrower or the Administrative Agent to the address, telecopier number or electronic mail address specified for such Person on Schedule 10.02; and
- (ii) if to any other Lender, to the address, telecopier number or electronic mail address specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier or electronic mail shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received when sent; provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, “Agent Parties”) have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials through electronic telecommunications or other information transmission systems, except for direct or “economic” (as such term is used in Title 18, United States Code, Section 1030(g)) (as opposed to special, indirect, consequential or punitive) losses, claims, damages, liabilities or expenses to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to such direct or “economic” damages).

(d) Change of Address, Etc. Each of the Loan Parties and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of the Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or by any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall impair such right, remedy power or privilege hereunder or operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13) or (iii) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (y) in addition to the matters set forth in clauses (ii) and (iii) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

Section 10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Holdings and the Borrower jointly and severally agree to pay (i) all reasonable and documented out-of-pocket costs and expenses (including the reasonable fees, expenses and other charges of counsel or other advisor for the Administrative Agent or any Lender, including the Lender Advisors) incurred by any Agent, the Lenders and any of their respective Affiliates, in connection with the structuring, documentation, negotiation, arrangement and syndication of the credit facilities provided for herein and any credit or similar facility refinancing, extending or replacing, in whole or in part, the credit facilities provided herein, including the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or any other document or matter requested by the Borrower or any other Loan Party, (ii) all reasonable and documented out-of-pocket costs and expenses of creating, perfecting, recording, maintaining and preserving Liens in favor of the Collateral Agent for the benefit of the Senior Credit Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes (including the payment of stamp duty), search fees, title insurance premiums and reasonable fees, expenses and other charges of counsel to the Collateral Agent and of counsel providing any opinions that the Administrative Agent or the Collateral Agent may reasonably request in respect of the Collateral or the Liens created pursuant to the Collateral Documents and (iii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel or other advisor for the Administrative Agent or any Lender, including the Lender Advisors) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; provided that Holdings and the Borrower shall not be required to reimburse the legal fees and expenses of more than (x) one outside counsel (in addition to any special counsel and up to one local counsel in each applicable local jurisdiction) for the Administrative Agent and its Related Parties, taken as a whole, and (y) one outside counsel (in addition to any special counsel and up to one local counsel in each applicable local jurisdiction) for the Lenders and their Related Parties, taken as a whole, unless, in the opinion of counsel, representation of all such indemnified persons would be inappropriate due to the existence of an actual or potential conflict of interest.

(b) Indemnification. Holdings and the Borrower, jointly and severally, shall indemnify each Agent (and any sub-agent thereof), 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, penalties, claims, actions, judgments, suits, costs, and reasonably related expenses (including, reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party relating to, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby (including any amendments, waivers, or consents with respect to any provision of any Loan Documents), the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, any enforcement of any of the Loan Documents (including any sale of, collection from or other realization upon any of the Collateral or the enforcement of any Loan Guaranty) or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability of the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing brought by a third party or by the Borrower or any other Loan Party or any of the Borrower’s or such Loan Party’s directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto (all of the foregoing, collectively, the “Indemnified Liabilities”); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee (other than the Agents and their Related Parties) for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 10.04(b) shall not apply to Taxes, except any Taxes that represent losses, claims, damages, liabilities or reasonably related expenses arising from a non-Tax claim.

(c) Reimbursement and Indemnification by Lenders. The Lenders severally agree to indemnify upon demand each Agent (and any sub-agent thereof) and any Related Party thereof (to the extent not reimbursed by or on behalf of Holding or the Borrower and without limiting the obligation of Holdings and the Borrower to do so) ratably in accordance with the Lenders’ respective Pro Rata Shares (determined as of the time that the applicable indemnity payment is sought (or if such indemnity payment is sought after the date on which the Loans have been paid in full and the Commitments have terminated, in accordance with their respective Pro Rata Shares immediately prior to the date on which the Loans are paid in full and the Commitments are terminated)), and hold harmless each Agent (and each sub-agent thereof) and each Related Party thereof from and against, any and all Indemnified Liabilities that may at any time be imposed on, incurred by or asserted against any Agent (or sub-agent thereof) or any Related Party thereof; provided that no Lender shall be liable for the payment to any Agent (or any sub-agent thereof) or any Related Party thereof of any portion of such Indemnified Liabilities resulting from such Person’s own gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction; provided further that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 10.04(c). Without limitation of the foregoing, the Lenders shall reimburse each Agent upon demand ratably in accordance with the Lenders’ respective Pro Rata Shares (determined as of the time that the applicable reimbursement is sought (or if such reimbursement is sought after the date on which the Loans have been paid in full and the Commitments have terminated, in accordance with their respective Pro Rata Shares immediately prior to the date on which the Loans are paid in full and the Commitments are terminated)), for any costs or out-of-pocket expenses incurred by each Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of Holdings or the Borrower; provided that such reimbursement by the Lenders shall not affect Holdings’ and the Borrower’s continuing reimbursement obligations with respect thereto. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(e). Each Lender hereby authorizes each Agent and Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent or the Collateral Agent to such Lender from any source against any amount due to the Administrative Agent or the Collateral Agent under this Section 10.04(c). The undertaking in this Section 10.04(c) shall survive termination of the Commitments, the payment of all other Obligations and the resignation and/or replacement of the Administrative Agent or the Collateral Agent, as the case may be.

(d) **Waiver of Consequential Damages**. To the fullest extent permitted by applicable Law, no Borrower or Indemnitee shall assert, and each Borrower and Indemnitee hereby waives, any claim, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof *provided* that the foregoing will not limit the Borrower's indemnity or reimbursement obligations otherwise set forth in this Section 10.04. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments**. All amounts due under this Section 10.04 shall be payable not later than ten Business Days after demand therefor; *provided*, however, that such Indemnitee shall promptly refund such amount to the extent that there is a final judicial or arbitral determination that such Indemnitee was not entitled to indemnification or contribution rights with respect to such payment pursuant to the express terms of this Section 10.04.

(f) **Survival**. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the New Money DIP Commitments and the repayment, satisfaction or discharge of all the other Loan Obligations.

Section 10.05 Marshalling; Payments Set Aside. None of the Agents or the Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Loan Obligations. To the extent that any payment by or on behalf of the Borrower or any other Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (ii) of the preceding sentence shall survive the payment in full of the Loan Obligations and the termination of this Agreement.

Section 10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (except as permitted under Section 7.04) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f), or (iv) to an SPC in accordance with the provisions of Section 10.06(g) (and any other attempted assignment or transfer by any party hereto shall be null and void); provided, however, that notwithstanding anything to the contrary, no Lender may assign or transfer by participation any of its rights or obligations hereunder to (i) a natural Person or (ii) to Holdings, the Borrower or any of their respective Subsidiaries. Nothing in this Agreement, expressed or implied, is intended to confer, shall be construed to confer, or shall confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section 10.06 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. In the event of a transfer, assignment, novation or amendment of any rights or obligations under any Loan Documents, the security interests created under the Loan Documents shall automatically and without any formality be preserved as permitted under articles 1278 to 1281 of the Luxembourg Civil Code and for any other purposes.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

- (A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and
- (B) in any case not described in subsection (b)(i)(A) of this Section 10.06, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1.0 million unless the Administrative Agent otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 10.06 and, in addition:

- (A) [reserved]; and
- (B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption. The parties to each assignment shall execute (except as otherwise contemplated in the penultimate sentence of Section 10.13) and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, any tax forms required under Section 3.01, and all documentation and other information about such assignee as shall have been reasonably requested by the Administrative Agent in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.

(v) No Assignment to Natural Persons or Borrower and its Affiliates. No such assignment shall be made to any Defaulting Lender, a natural person, the Borrower or any of the Borrower’s Subsidiaries or Affiliates.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 10.06, from and after the effective date specified in each Assignment and Assumption, (1) other than in connection with an assignment pursuant to Section 10.06(i), the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender’s having been a Defaulting Lender. Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection (b) 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 Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain a copy of each Assignment and Assumption delivered to it and each notice of cancellation of any Loans delivered by the Borrower pursuant to Section 10.06(i), and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal and stated interest amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, absent manifest error, and each Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender with respect with its own position only, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.06(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in “registered form” within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). In addition, at any time that a request for a consent for a material or other substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register. Upon its receipt of, and consent to, a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder), any tax forms required under Section 3.01, and all documentation and other information about such assignee as shall have been reasonably requested by the Administrative Agent in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, the processing and recordation fee referred to in subsection (b) above, if applicable, and the written consent of the Administrative Agent, if required, and, if required, the Borrower to such assignment, the Administrative Agent shall promptly (i) accept such Assignment and Assumption and (ii) record the information contained therein in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this subsection (c).

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower or any of the Borrower's Subsidiaries or Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clause (y) of the first proviso to Section 10.01 that directly affects such Participant. Subject to subsection (e) of this Section 10.06, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of those Sections, including Section 3.01(e) and Section 3.06) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b) (it being agreed that any documentation required to be provided under Section 3.01(e) shall be provided to the participating Lender). To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant shall be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"), provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary in connection with a Tax audit or proceeding to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations (or any applicable amended or successor regulations). The entries in the Participant Register shall be conclusive absent manifest error and such Lender (and the Borrower, to the extent that the Participant requests payment from the Borrower) shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Limitation upon Participant Rights.** A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless (i) the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld) or (ii) to the extent that any entitlement to a greater payment results from a Change in Law arising after such Participant became a Participant.

(f) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) **Special Purpose Funding Vehicles.** Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Subject to the provisions of this subsection (g), the Loan Parties agree that each SPC shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations of those Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.06. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.04) except (a) to the extent the increase or change results from a Change in Law arising after the grant is made or (b) if the grant to the SPC is made with the Borrower's prior written consent (not to be unreasonably withheld), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or guaranty or credit or liquidity enhancement to such SPC.

Section 10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Confidential Information (as defined below) and not to disclose such information, except that Confidential Information may be disclosed: (i) to its Affiliates and to its and their respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential); (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process in which case the Administrative Agent or such Lender, as applicable, shall notify the Borrower prior to such disclosure, in any case, to the extent legally permissible except in the case of routine bank examinations; (iv) to any other party hereto; (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (vi) subject to an agreement containing provisions at least as restrictive as those of this Section 10.07, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (vii) with the consent of the Borrower; (viii) to the extent such Confidential Information (A) becomes publicly available other than as a result of a breach of this Section 10.07 or (B) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower other than as a result of a breach of this Section 10.07; (ix) to any rating agency in connection with the Transaction, (x) on a confidential basis, to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, or (xi) to the extent such Confidential Information is independently developed by the Administrative Agent, any Lender or any of their respective Affiliates.

For purposes of this Section 10.07, “Confidential Information” means all non-public information received from Holdings, the Borrower or any of its Subsidiaries or Related Parties relating to Holdings or the Borrower or any Subsidiary or Related Party thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Holdings or the Borrower or any Subsidiary other than by breach of this Section 10.07; provided that, in the case of information received from Holdings or the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential or is delivered pursuant to Section 6.01, 6.02 or 6.03 hereof. Any Person required to maintain the confidentiality of Confidential Information as provided in this Section 10.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Confidential Information as such Person would accord to its own confidential information. Notwithstanding the foregoing, any Agent and any Lender may place advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose, and circulate similar promotional materials, after the closing of the transactions contemplated by this Agreement in the form of a “tombstone” or otherwise describing the names of the Loan Parties, or any of them, and the amount, type and closing date of such transactions, all at their sole expense.

Each of the Administrative Agent and the Lenders acknowledges that (i) the Confidential Information may include material non-public information concerning Holdings, the Borrower or one or more Subsidiaries, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Laws, including Federal and state securities Laws.

Section 10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld), to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other Obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the Obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such Obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and its Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Loan Obligations hereunder.

Section 10.10 **Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. 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 that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.11 **Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Loan Obligations shall remain unpaid or unsatisfied.

Section 10.12 **Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.13 **Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender's obligations to make or continue to make Loans has been suspended pursuant to Section 3.02, if any Lender becomes a Defaulting Lender or if any Lender becomes a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.04 or Section 3.01) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

- (i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);
- (ii) such Eligible Assignee shall have delivered to the Administrative Agent (unless the assignee is already a Lender hereunder) an Administrative Questionnaire, any tax forms required under Section 3.01, and all documentation and other information about such assignee as shall have been reasonably requested by the Administrative Agent in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act;
- (iii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);
- (iv) such Lender shall execute an Assignment and Assumption with respect to the Lender’s applicable Commitment and outstanding Loans;
- (v) in the case of any assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (vi) such assignment does not conflict with applicable Laws; and
- (vii) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable amendment, waiver, discharge or termination that the Borrower has requested shall become effective upon giving effect to such replacement (and any related Assignment and Assumptions required to be effected in connection therewith in accordance with this Section 10.13).

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to an amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders (or, in the case of a consent, waiver or amendment involving all affected Lenders of a certain class, the Required Class Lenders as applicable), then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “Non-Consenting Lender.”

In connection with any replacement, if any such Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption Agreement to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 10.14 Governing Law; Jurisdiction Etc.

(a) Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN SUCH OTHER LOAN DOCUMENTS) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) AND TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) Submission to Jurisdiction. SUBJECT TO THE FINAL SENTENCE OF THIS CLAUSE (b), EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM JURISDICTION, THE COURTS 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, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN THE BANKRUPTCY COURT, OR, IF THE BANKRUPTCY COURT DOES NOT HAVE, OR ABSTAINS FROM JURISDICTION, SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION, AND HEREBY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT.

(c) Waiver of Venue. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.14. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW. Each party to this Agreement irrevocably consents, to the fullest extent it may legally and effectively do so, to service of process in the manner provided for notices in this Agreement. As an alternative method of service, each Netherlands Loan Guarantor, each Mexico Loan Guarantor and each Portugal Loan Guarantor hereby also irrevocably appoints the Process Agent as its agent to receive on behalf of such Netherlands Loan Guarantor, Mexican Loan Guarantor or Portugal Loan Guarantor, as applicable, and its property service of copies of any process, summons, notice or document in any action or proceeding arising out of or relating to any Loan Documents, or for the recognition or enforcement of any judgment. Such service may be made by mailing or delivering a copy of such process to the applicable Netherlands Loan Guarantor, Mexico Loan Guarantor or Portugal Loan Guarantor in care of the Process Agent. Each Netherlands Loan Guarantor, each Mexico Loan Guarantor and each Portugal Loan Guarantor hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf and the Process Agent hereby accepts its appointment to act as process agent on behalf of the Netherlands Loan Guarantors, the Mexico Loan Guarantors and the Portugal Loan Guarantors. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.15 [Reserved].

Section 10.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 10.17 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby and by each of the other Loan Documents (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the transactions contemplated by the Loan Documents (including, without limitation, the services provided by the Agents under the Loan Documents and the exercise of rights and remedies under the Loan Documents) are arm's-length commercial transactions between each of the Loan Parties and their respective Affiliates, on the one hand, and each of the Agents and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) no Agent or Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its equityholders 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 Agent or Lender has advised, is currently advising or will advise any Loan Party, its equityholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents, (B) each Agent and each Lender is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (C) each of the Administrative Agent in its capacity as Administrative Agent and the Collateral Agent in its capacity as Collateral Agent has no obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and no Agent has any obligation to disclose any of such interests to the Loan Parties or any of their respective Affiliates. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it has deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Agent or Lender, on the one hand, and such Loan Party or its equityholders or its Affiliates, on the other. To the fullest extent permitted by law, each of the Loan Parties agrees that it will not assert, hereby waives and releases any claims that it may have against any Agent or any Lender any claim that any Agent or Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with any such transaction or the process leading thereto.

Section 10.18 Electronic Execution of Assignments and Certain Other Documents. This Agreement, any other Loan Document and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement or any other Loan Document (each a “Communication”), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding each of the Loan Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of each of the Loan Parties enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent, the Collateral Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent, the Collateral Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Administrative Agent nor the Collateral Agent is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent or Collateral Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent or Collateral Agent has agreed to accept such Electronic Signature, the Administrative Agent, the Collateral Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Administrative Agent, the Collateral Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Section 10.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies all Loan Parties that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into Law October 26, 2001)) (the “USA PATRIOT Act”), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. Each Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the USA PATRIOT Act.

Section 10.20 Orders; Intercreditor Agreements.

(a) In the event of any conflict between the terms of the Orders and the terms of this Agreement or any other Loan Document (including the Intercreditor Agreement), the terms of the Orders shall govern and control.

(b) Each of the Lenders and the other Senior Credit Parties: acknowledges that obligations of the Loan Parties under the DIP ABL Loan Documents and Pre-Petition ABL Documents are secured by Liens on assets of the Loan Parties that constitute Collateral and that the relative Lien priority and other creditor rights of the Senior Credit Parties and the secured parties under the DIP ABL Documents and the Pre-Petition ABL Loan Documents will be set forth in the Intercreditor Agreement. Each of the Lenders and the other Senior Credit Parties hereby acknowledges that it has received a copy of the Intercreditor Agreement. Each of the Lenders and the other Senior Credit Parties hereby irrevocably authorizes and directs the Administrative Agent and the Collateral Agent to (i) execute and deliver, in each case on behalf of such Senior Credit Party and without any further consent, authorization or other action by such Senior Credit Party, on the Closing Date, the Intercreditor Agreement dated as of the Closing Date and any documents relating thereto and (ii) appoint Cortland to act as Specified Mexico Collateral Agent (as defined therein) thereunder and under the other Specified Mexico Collateral Documents (as defined therein). Each of the Lenders and the other Senior Credit Parties agree that in the event of any conflict or inconsistency between this Agreement and the Intercreditor Agreement with respect to lien priority, rights and remedies in connection with the Collateral, or otherwise, the terms of the Intercreditor Agreement shall govern.

(c) Each of the Lenders and the other Senior Credit Parties (each on behalf of itself and any Senior Credit Parties that may be its Affiliate) hereby irrevocably (i) consents to the treatment of Liens to be provided for under the Intercreditor Agreement, (ii) agrees that, upon the execution and delivery thereof, such Senior Credit Party will be bound by the provisions of the Intercreditor Agreement as if it were a signatory thereto and will take no actions contrary to the provisions of the Intercreditor Agreement, (iii) agrees that no Senior Credit Party shall have any right of action whatsoever against the Administrative Agent or any Collateral Agent or Cortland, in its capacity as Specified Mexico Collateral Agent (as defined in the Intercreditor Agreement), as a result of any action taken by the Administrative Agent, the Collateral Agent or Cortland, in its capacity as Specified Mexico Collateral Agent (as defined in the Intercreditor Agreement) pursuant to this Section 10.20 or in accordance with the terms of the Intercreditor Agreement, (iv) authorizes and directs the Administrative Agent and the Collateral Agent to carry out the provisions and intent of each such document and (v) authorizes and directs the Administrative Agent and the Collateral Agent to take such actions as shall be required to release Liens on the Collateral in accordance with the terms of the Intercreditor Agreement.

Section 10.21 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 the applicable Resolution Authority.

Section 10.22 Parallel Liability. Each Loan Party irrevocably and unconditionally undertakes to pay to the Collateral Agent an amount equal to the aggregate amount of its Corresponding Liabilities (as these may exist from time to time). The parties hereto agree that (a) a Loan Party's Parallel Liability is due and payable at the same time as, for the same amount of and in the same currency as its Corresponding Liabilities, (b) a Loan Party's Parallel Liability is decreased to the extent that its Corresponding Liabilities have been irrevocably paid or discharged and its Corresponding Liabilities are decreased to the extent that its Parallel Liability has been irrevocably paid or discharged, (c) a Loan Party's Parallel Liability is independent and separate from, and without prejudice to, its Corresponding Liabilities, and constitutes a single obligation of that Loan Party to the Collateral Agent (even though that Loan Party may owe more than one Corresponding Liability to the Loan Parties under the Loan Documents) and an independent and separate claim of the Collateral Agent to receive payment of that Parallel Liability (in its capacity as the independent and separate creditor of that Parallel Liability and not as a co-creditor in respect of the Corresponding Liabilities); and (d) solely for purposes of this Section 10.22, the Collateral Agent acts as creditor in its own right and not as agent or representative of any other Senior Credit Party or any other Person and accordingly holds neither its claim resulting from a Parallel Liability nor any Collateral securing a Parallel Liability on trust.

Section 10.23 Portugal Guarantor. The Portugal Guarantee granted by the Portugal Loan Guarantor (a) will not guarantee, in any case, any Loan Obligations under the Loan Documents if and to the extent the granting of such guarantee would, in any way, constitute unlawful financial assistance situation in violation, to the extent applicable, of article 322 of the Portuguese Commercial Companies Code, enacted by Decree-Law no. 262/86, of 2 September 1986, as amended from time to time; (b) shall be preserved and shall not be released, discharged, extinguished or in any way impaired or jeopardized neither (i) by the amendment, alteration or novation of the Loan Obligations nor (ii) by the transfer, whether by assignment, novation or otherwise of the Loan Obligations, all carried out in accordance with the Loan Documents. The Portugal Loan Guarantor waives its rights of prior *excusso* (*renúncia ao benefício da excussão prévia*).

ARTICLE XI

LOAN GUARANTY

Section 11.01 Loan Guaranty. Each Loan Guarantor hereby agrees that it is jointly and severally liable for, and, as primary obligor and not merely as surety, absolutely and unconditionally Guarantees to the Administrative Agent and each other Senior Credit Party and their respective successors and assigns, the due and punctual payment and performance of the Loan Obligations, and that all other obligations of the Borrower to the Senior Credit Parties or the Administrative Agent under this Agreement or the Credit Agreement shall be promptly paid in full or performed, all in accordance with the terms hereof. Each Loan Guarantor further agrees that the Loan Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its Guarantee notwithstanding any such extension or renewal.

Section 11.02 Guaranty of Payment. Each of the Loan Guarantors further agrees that failing payment when due of any amount so guaranteed or any performance so Guaranteed for whatever reason, the Loan Guarantors shall be jointly and severally obligated to pay the same immediately. Each Loan Guarantor agrees that this is a Guarantee of payment and not a guarantee of collection. Each Loan Guarantor waives any right to require the Administrative Agent, the Collateral Agent, any Lender or any other Senior Credit Party to sue the Borrower, any Loan Guarantor, any other Guarantor, or any other person obligated for all or any part of the Loan Obligation, or otherwise to enforce its payment against any collateral securing all or any part of the Loan Obligations.

Section 11.03 No Limitations.

(a) Except for termination of a Loan Guarantor's obligations hereunder as expressly provided in Section 9.10 hereof, the obligations of each Loan Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Loan Obligations, or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Guarantor hereunder shall not be discharged or impaired or otherwise affected by (i) the failure of the Administrative Agent or any other Senior Credit Party to assert any claim or demand or to enforce any right or remedy under the provisions of any Loan Document or otherwise; (ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Loan Guarantor under this Agreement; (iii) the release of any security held by the Collateral Agent or any other Senior Credit Party for the Loan Obligations; (iv) any default, failure or delay, willful or otherwise, in the performance of the Loan Obligations; or (v) any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Guarantor or otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the indefeasible payment in full of all the Loan Obligations). Subject to the terms of the Intercreditor Agreement, each Loan Guarantor expressly authorizes the Senior Credit Parties to take and hold security for the payment and performance of the Loan Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Loan Obligations, all without affecting the obligations of any Loan Guarantor hereunder.

(b) To the fullest extent permitted by applicable Law, each Loan Guarantor waives any defense based on or arising out of any defense of the Borrower, the Portugal Loan Guarantor or any other Loan Guarantor or the unenforceability of the Loan Obligations, or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower, the Portugal Loan Guarantor or any other Loan Guarantor, other than the indefeasible payment in full of all the Loan Obligations. Subject to the terms of the Intercreditor Agreement, the Administrative Agent, Collateral Agent and the other Senior Credit Parties may in accordance with the terms of the Collateral Documents, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Loan Obligations, make any other accommodation with the Borrower, the Portugal Loan Guarantor or any other Loan Guarantor or exercise any other right or remedy available to them against the Borrower, the Portugal Loan Guarantor or any other Loan Guarantor, without affecting or impairing in any way the liability of any Loan Guarantor hereunder except to the extent the Loan Obligations have been fully and indefeasibly paid in full. To the fullest extent permitted by applicable Law, each Loan Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Guarantor against the Borrower, the Portugal Loan Guarantor or any other Loan Guarantor, as the case may be, or any security.

(c) In case any provision hereunder 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.

(d) All rights of the Administrative Agent hereunder and all obligations of each Loan Guarantor under this Loan Guaranty shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of this Agreement, any other Loan Document, any agreement with respect to any of the Loan Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Loan Obligations, or any other amendment or waiver of or any consent to any departure from this Agreement, any other Loan Document, any other agreement or instrument, (c) any release or amendment or waiver of or consent under or departure from any guarantee guaranteeing all or any of the Loan Obligations or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Guarantor in respect of the Loan Obligations or this Agreement, other than the indefeasible payment in full of all the Loan Obligations. Without limiting the generality of the foregoing, each Mexico Loan Guarantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, all rights and benefits of *orden, excusión, división, quita, novación, espera* and/or *modificación* and any other rights specified in Articles 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2826, 2827, 2829, 2837, 2838, 2839, 2840, 2842, 2844, 2845, 2846, 2847, 2848 and 2849, and any other related or applicable Articles of the Federal Civil Code of Mexico (*Código Civil Federal*) and the corresponding provisions of the Civil Codes applicable in the States of Mexico (or any successor provisions) and in Mexico City, Mexico. Each Mexico Loan Guarantor hereby expressly and irrevocably represents that it has full knowledge about the content of such Articles described above, and therefore, such Articles are not required to be transcribed herein.

Section 11.04 Rights of Subrogation. Each Loan Guarantor shall be subrogated to all rights of Senior Credit Parties against the Borrower in respect of any amounts paid by any Loan Guarantor pursuant to the provisions of Section 11.01 hereof; provided that, if an Event of Default has occurred and is continuing, no Loan Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Borrower under this Agreement or the Loan Obligations shall have been paid in full.

Section 11.05 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Loan Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Borrower or otherwise, including, without limitation in connection with the Cases, each Loan Guarantor's obligations under this Loan Guaranty (if any) with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent or any other Senior Credit Party is in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Loan Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, including, without limitation, by the Cases, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Loan Obligations shall nonetheless be payable by the Loan Guarantors to the extent such Loan Guarantor has guaranteed such Loan Obligation forthwith on demand by the Administrative Agent or any other Senior Credit Party.

Section 11.06 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's, the Portugal Loan Guarantor and each other Loan Guarantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Loan Obligations, and the nature, scope and extent of the risks that such Loan Guarantor assumes and incurs hereunder, and agrees that none of the Administrative Agent or the other Senior Credit Parties will have any duty to advise such Loan Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 11.07 Waiver of Contribution and Subrogation. Each Loan Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Senior Credit Parties in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Loan Guarantor further agrees that, subject to the terms of the Intercreditor Agreement, as between the Loan Guarantors, on the one hand, and the Senior Credit Parties and the Administrative Agent, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VIII hereof for the purposes of this Loan Guaranty, 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 VIII hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Loan Guarantors for the purpose of this Agreement. The Loan Guarantors shall have the right to seek contribution from any non-paying Loan Guarantor so long as the exercise of such right does not impair the rights of the Senior Credit Parties under the Loan Guaranty.

Section 11.08 Subordination. Each Loan Guarantor hereby agrees that upon the occurrence and during the continuance of an Event of Default and after notice from the Administrative Agent, all Indebtedness owed by it to any Subsidiary shall be fully subordinated to the indefeasible payment in full of the Loan Obligations.

Section 11.09 Survival of Loan Guaranty. All covenants, agreements, representations and warranties made by the Loan Guarantors in this Loan Guaranty shall be considered to have been relied upon by the Senior Credit Parties and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Loan Obligations shall remain unpaid or unsatisfied.

Section 11.10 Right of Setoff. In addition to any rights and remedies of the Senior Credit Parties provided by Law, upon the occurrence and during the continuance of any Event of Default, each Senior Credit Party and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any Loan Guarantor, any such notice being waived by the Borrower and each Loan Guarantor to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Senior Credit Party and its Affiliates to or for the credit or the account of the respective Loan Guarantors against any and all obligations owing to such Senior Credit Party and its Affiliates hereunder, now or hereafter existing, irrespective of whether or not such Senior Credit Party or Affiliate shall have made demand under this Agreement and although such obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Senior Credit Party agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Senior Credit Party; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Senior Credit Party under this Section 11.10 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent and such Senior Credit Party may have.

Section 11.11 Maximum Liability. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, including, without limitation, the Bankruptcy Code, if the obligations of any Loan Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Guarantors or any Senior Credit Party, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Loan Guarantor's "Maximum Liability"). This Section with respect to the Maximum Liability of each Loan Guarantor is intended solely to preserve the rights of the Administrative Agent and the other Senior Credit Parties to the maximum extent not subject to avoidance under applicable law, and no Loan Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Loan Guarantor hereunder shall not be rendered voidable under applicable law. Each Loan Guarantor agrees that the Loan Obligations guaranteed by such Loan Guarantor may at any time and from time to time exceed the Maximum Liability of each Loan Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of the Administrative Agent or any other Senior Credit Party hereunder, provided that, nothing in this sentence shall be construed to increase any Loan Guarantor's obligations hereunder beyond its Maximum Liability.

Section 11.12 Contribution.

(a) In the event any Loan Guarantor (a "Paying Guarantor") shall make any payment or payments under this Loan Guaranty in respect of the Loan Obligations or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty in respect of the Loan Obligations, each other Loan Guarantor (each a "Non-Paying Guarantor") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Applicable Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article XI, each Non-Paying Guarantor's "Applicable Percentage" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Guarantor's Maximum Liability as of such date in respect of the Loan Obligations (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability in respect of the Loan Obligations has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrower after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Loan Guarantors hereunder in respect of the Loan Obligations (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Loan Guarantor in respect of the Loan Obligations, the aggregate amount of all monies received by such Loan Guarantors from the Borrowers after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Loan Guarantor's several liability for the entire amount of the Loan Obligations (up to such Loan Guarantor's Maximum Liability in respect of the Loan Obligations).

(b) Each of the Loan Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Paying Guarantor or Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of the Loan Obligations. This provision is for the benefit of both the Administrative Agent, the Senior Credit Parties and the Loan Guarantors and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

Section 11.13 Liability Cumulative. The liability of each Loan Party (other than the Portugal Loan Guarantor) as a Loan Guarantor under this Article XI is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent and the other Senior Credit Parties under this Agreement and the other Loan Documents to which such Loan Party is a party without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

Section 11.14 Effect of Netherlands Civil Code. Notwithstanding the foregoing provisions of this Article XI, no Loan Party residing or incorporated in The Netherlands shall, or shall be deemed to, guarantee any Loan Obligations or otherwise bind itself (whether by indemnification or otherwise) to the extent that if included, such act would constitute unlawful financial assistance within the meaning of Article 98c or 207c of Book 2 of the Netherlands Civil Code.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

LIBBEY INC.,
as Holdings

By: /s/ Michael P. Bauer

Name: Michael P. Bauer
Title: Chief Executive Officer

LIBBEY GLASS INC.,
as Borrower

By: /s/ Michael P. Bauer

Name: Michael P. Bauer
Title: Chief Executive Officer

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

SUBSIDIARY GUARANTORS:

LGA3 CORP.

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

THE DRUMMOND GLASS COMPANY

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

LGA4 CORP.

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

SYRACUSE CHINA COMPANY

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

LGFS INC.

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

SUBSIDIARY GUARANTORS (CONT.):

WORLD TABLEWARE INC.

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

LGC CORP.

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

LGAC LLC

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

LIBBEY.COM LLC

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

LGAU CORP.

By: /s/ Michael P. Bauer

Name: Michael P. Bauer

Title: Chief Executive Officer

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

SUBSIDIARY GUARANTORS (CONT.):

LIBBEY EUROPE B.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

LIBBEY INTERNATIONAL C.V.
represented by its general partner LIBBEY
GLASS INC.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Senior Vice President,
General Counsel and
Secretary

B.V. KONINKLIJKE NEDERLANDSCHE
GLASFABRIEK LEERDAM

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

LIBBEY EUROPE FINANCE COMPANY B.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

SUBSIDIARY GUARANTORS (CONT.):

LIBBEY MEXICO HOLDINGS B.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

LIBBEY MÉXICO, S. DE R.L. DE C.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Attorney-In-Fact

CRISA LIBBEY MÉXICO, S. DE R.L. DE C.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Attorney-In-Fact

CRISAL-CRISTALARIA AUTOMÁTICA, SA

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Chairman of the Board of
Directors with delegated
powers

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent and as Collateral Agent

By: /s/ Winnalynn N Kantaris

Name: Winnalynn N. Kantaris

Title: Associate General Counsel

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

Credit Suisse Loan Funding LLC,
as a Lender

By: /s/ Sathish Shanthan
Name: Sathish Shanthan
Title: Authorized Signatory

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

By Brigade Capital Management, LP as
Investment Manager on Behalf of its Various
Funds Accounts listed below, as Lenders

By: /s/ Patrick Criscillo

Name:

Patrick Criscillo

Title: Chief Financial Officer

Portfolio

Big River Group Fund SPC LLC

Brigade Credit Fund II Ltd.

Brigade Collective Investment Trust - Brigade Diversified Credit CIT

Brigade Opportunistic Credit LBG Fund Ltd.

Delta Master Trust

FedEx Corporation Employees' Pension Trust

Future Directions Credit Opportunities Fund

JPMorgan Chase Retirement Plan Brigade Bank Loan

Los Angeles County Employees Retirement Association

SC CREDIT OPPORTUNITIES MANDATE, LLC

SEI Institutional Managed Trust - Multi-Strategy Alternative Fund

The Coca-Cola Company Master Retirement Trust

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

Pelican Loan Advisors III, LLC _____,
as a Lender

By: /s/ Daniel Collin
Name: Daniel Collin
Title: Authorized Signer

GCF Subsidiary 1 LLC, as a Lender

By: /s/ Christina D. Jamieson
Name: Christina D. Jamieson
Title: Designated Signatory

GC Finance Operations II, Inc., as a Lender

By: /s/ Christina D. Jamieson
Name: Christina D. Jamieson
Title: Designated Signatory

Bell Atlantic Master Trust,
as a Lender

By: /s/ Adolfo Waisburg
Name: Adolfo Waisburg
Title: Authorized Signatory

Credit Value Master Fund IV-A1, LP,
as a Lender

By: /s/ Adolfo Waisburg
Name: Adolfo Waisburg
Title: Authorized Signatory

Credit Value Master Fund IV-B, LP,
as a Lender

By: /s/ Adolfo Waisburg
Name: Adolfo Waisburg
Title: Authorized Signatory

**NYLIAC General Credit Value Partners (SMA),
1861,**
as a Lender

By: /s/ Adolfo Waisburg
Name: Adolfo Waisburg
Title: Authorized Signatory

[SUPERPRIORITY SECURED DEBTOR-IN-POSSESSION CREDIT AGREEMENT]

Schedule 1.01(a)

Subsidiary Guarantors

1. The Drummond Glass Company
2. World Tableware Inc.
3. LGA3 Corp.
4. LGA4 Corp.
5. Syracuse China Company
6. Libbey.com LLC
7. LGFS Inc.
8. LGAC LLC
9. LGC Corp.
10. LGAU Corp.
11. Crisa Libbey México, S. de R.L. de C.V.
12. Libbey México, S. de R.L. de C.V.
13. Crisal – Cristalaria Automática S.A.
14. Libbey International C.V.
15. Libbey Europe B.V.
16. Libbey Mexico Holdings B.V.
17. B.V. Koninklijke Nederlandsche Glasfabriek Leerdam
18. Libbey Europe Finance Company B.V.

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of

June 3, 2020

among

LIBBEY GLASS INC.

and

LIBBEY EUROPE B.V.,

each as a Borrower,

LIBBEY INC., as a Loan Guarantor,

The Other Loan Parties Party Hereto,

The Lenders Party Hereto

and

**JPMORGAN CHASE BANK, N.A.,
as Administrative Agent**

and

**J.P. MORGAN SECURITIES LLC
as Lead Arranger**

ASSET BASED LENDING

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- Exhibit J-4 – U.S. Tax Certificate (For Foreign Lenders that are Partnerships for U.S. Federal Income Tax Purposes)
- Exhibit K – [Reserved]
- Exhibit L – Form of Borrowing Notice
- Exhibit M – Initial Approved Budget
- Exhibit N – Interim Financing Order

DEBTOR-IN-POSSESSION CREDIT AGREEMENT dated as of June 3, 2020 (as it may be amended or modified from time to time, this "Agreement"), among LIBBEY GLASS INC. and LIBBEY EUROPE B.V., as Borrowers, LIBBEY INC., as a Loan Guarantor, the other Loan Parties party hereto, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

W I T N E S S E T H:

WHEREAS, on June 1, 2020 (the "Filing Date"), Holdings, US Borrower, and their respective domestic Subsidiaries (each a "Debtor" and collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, the Debtors are continuing to operate their businesses and manage their properties as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrowers have requested that Lenders provide a secured revolving credit facility to Borrowers in order to (i) fund the continued operation of Borrowers' businesses during the pendency of the Bankruptcy Cases and (ii) repay in full the Existing Secured Obligations (as hereinafter defined) other than the Existing Netherlands Secured Obligations (as hereinafter defined); and

WHEREAS, the Lenders are willing to make available to Borrowers such post-petition loans, other extensions of credit and financial accommodations upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the representations, covenants and mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Definitions

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

"ABL Priority Collateral" means "ABL Priority Collateral" as defined in the Intercreditor Agreement.

"Account" has the meaning assigned to such term in the US Security Agreement and, with respect to the Netherlands Loan Parties, "Receivables" as defined in the Deed of Disclosed Pledges of Receivables and Deed of Undisclosed Pledges of Receivables.

"Account Debtor" means any Person obligated on an Account.

"Act" has the meaning set forth in Section 5.15.

"Adjusted LIBO Rate" means, with respect to any Eurocurrency Borrowing for any Interest Period or for any CBFR Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate; provided that, notwithstanding the foregoing, with respect to Netherlands Loans, the Adjusted LIBO Rate shall equal the LIBO Rate for such Interest Period.

"Adjusted One Month LIBOR Rate" means, for any day, an interest rate per annum equal to the sum of (i) 2.50% plus (ii) the Adjusted LIBO Rate for a one month interest period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate at approximately 11:00 a.m. London time on such day; provided further, that, if the LIBO Screen Rate at such time shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Administrative Agent" means JPMorgan Chase Bank, N.A. in its capacity as administrative and collateral agent for the Lenders hereunder, or, as applicable, such branches or affiliates of JPMorgan Chase Bank, N.A. as it shall from time to time designate for the purpose of performing its obligations hereunder in such capacity. References to the "Administrative Agent" shall include any other branch or affiliate of JPMorgan Chase Bank, N.A. designated by JPMorgan Chase Bank, N.A. for the purpose of performing such obligations in such capacity (including, with respect to acting as collateral agent under the Portugal Collateral Documents and the Netherlands Collateral Documents, J.P. Morgan Europe Limited).

"Administrative Agent Consultant" means, any consultant, financial advisor, appraiser or other professional engaged by the Administrative Agent or any legal counsel to the Administrative Agent and designated as an Administrative Agent Consultant by the Administrative Agent in writing. As of the Effective Date, the Administrative Agent Consultant is AlixPartners.

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

"Affected Financial Institution" means (a) any EEA Financial Institutional or (b) any UK Financial Institution.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Availability" means, with respect to all the Borrowers, at any time, an amount equal to the sum of (a) the US General Availability and (b) the Netherlands Availability.

"Aggregate Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit I or another form which is acceptable to the Administrative Agent in its sole discretion.

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

"Agreement Currency" has the meaning set forth in Section 9.18(b).

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to Holdings or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Percentage" means, with respect to any Lender, at any time, (a) with respect to Revolving Loans, LC Exposure or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender's Revolving Commitment then in effect and the denominator of which is the aggregate Revolving Commitment of all Revolving Lenders (if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender's share of the aggregate Revolving Exposures at that time); provided that in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender's Revolving Commitment shall be disregarded in the calculation, (b) with respect to Revolving Loans made to the Netherlands Borrower pursuant to the Revolving Netherlands Sublimit, a percentage equal to a fraction the numerator of which is such Lender's Revolving Netherlands Sublimit then in effect and the denominator of which is the aggregate Revolving Netherlands Sublimit of all Revolving Lenders (if the Revolving Netherlands Sublimit has terminated or expired, the Applicable Percentages shall be determined based upon such Lender's share of the aggregate Revolving Netherlands Exposures at that time); provided that in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender's Revolving Netherlands Sublimit shall be disregarded in the calculation and (c) with respect to Protective Advances or with respect to the Aggregate Credit Exposure, a percentage based upon its share of the Aggregate Credit Exposure and the unused Commitments; provided that in the case of Section 2.20 when a Defaulting Lender shall exist, any such Defaulting Lender's Commitment shall be disregarded in the calculation.

"Applicable Rate" means, for any day, with respect to any CBFR Loan, 2.50% per annum, with respect to any Eurocurrency Loan, 3.50% per annum, with respect to the commitment fees payable hereunder, 0.50% per annum, or with respect to the Terminated Swap Obligations, 3.50% per annum to the extent bearing interest at a rate determined by the CB Floating Rate, and 4.50% per annum to the extent bearing interest with respect to a rate determined by the Adjusted LIBO Rate.

"Approved Budget" means the Initial Approved Budget as amended and supplemented by any Weekly Cash Flow Forecast delivered in accordance with Section 5.01(g) and approved by the Administrative Agent in accordance with Section 5.21.

"Approved Fund" has the meaning assigned to such term in Section 9.04.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent and in the case of such Assignment and Assumption not substantially in the form of Exhibit A, the Borrower Representative.

"Availability" means at any time, with respect to the US Borrower, US General Availability at such time and, with respect to the Netherlands Borrower, the Netherlands Availability at such time.

"Availability Period" means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

"Available Commitment" means, at any time, the difference of (a) the total Commitments then in effect *minus* (b) the aggregate (USD Equivalent) amount of the Revolving Exposures of all Revolving Lenders and the "Revolving Exposures" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement at such time.

"Avoidance Actions" means any and all claims and causes of action of any Debtor's estate arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, together with all proceeds therefrom.

"Avoided Payments" has the meaning specified in Section 2.11(d).

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation administration or other insolvency proceedings).

"Banking Services" means each and any of the following bank services provided to any Loan Party by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, "commercial credit cards" and purchasing cards), (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts, interstate depository network services and international treasury management services).

"Banking Services Obligations" with respect to any Loan Party means any and all obligations of such Loan Party, whether absolute or contingent and howsoever and wheresoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

"Banking Services Reserves" means all Reserves which the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

"Bankruptcy Cases" means the cases of the Debtors jointly administered under chapter 11 of the Bankruptcy Code pending before the Bankruptcy Court, bearing case number 20-11439 and any superseding chapter 7 case or cases.

"Bankruptcy Code" means, as applicable, Title 11 of the U.S. Code (11 U.S.C. §101 *et seq*), and any rule or regulation issued thereunder.

"Bankruptcy Court" has the meaning assigned to such term in the preamble.

"Benchmark Replacement" means 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 and/or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the 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 1.00%, the Benchmark Replacement will be deemed to be 1.00% 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 sole discretion.

"Benchmark Replacement Adjustment" means 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 the LIBO Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBO Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time (for the avoidance of doubt, such Benchmark Replacement Adjustment shall not be in the form of a reduction to the Applicable Rate).

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "CB Floating Rate," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

"Benchmark Replacement Date" means the earlier to occur of the following events with respect to the LIBO Rate:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the LIBO Screen Rate permanently or indefinitely ceases to provide the LIBO Screen Rate; or

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

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the LIBO Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the LIBO Screen Rate announcing that such administrator has ceased or will cease to provide the LIBO Screen Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBO Screen Rate, a resolution authority with jurisdiction over the administrator for the LIBO Screen Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Screen Rate, which states that the administrator of the LIBO Screen Rate has ceased or will cease to provide the LIBO Screen Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Screen Rate; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Screen Rate announcing that the LIBO Screen Rate is no longer representative.

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

"Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate and solely to the extent that the 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 the LIBO Rate for all purposes hereunder in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder pursuant to Section 2.14.

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

"Blocking Regulation" has the meaning assigned to it in Section 3.23.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" or "Borrowers" means, individually or collectively, the US Borrower and the Netherlands Borrower.

"Borrower Representative" means the US Borrower, in its capacity as contractual representative of the Borrowers pursuant to Article XI.

"Borrowing" means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect, (b) a Swingline Loan of the same Type and (c) a Protective Advance of the same Type.

"Borrowing Base" means, at any time, with respect to each Borrower, the US Borrowing Base at such time; provided that, with respect to the Netherlands Borrower, "Borrowing Base" in respect of Borrowings pursuant to the Revolving Netherlands Sublimit means the Netherlands Borrowing Base.

"Borrowing Base Certificate" means, individually or collectively, the US Borrowing Base Certificate and the Netherlands Borrowing Base Certificate.

"Borrowing Date" means any Business Day specified by a Borrower as a date on which such Borrower requests the relevant Lenders to make Loans hereunder.

"Borrowing Notice" means a notice substantially in the form of Exhibit L by the Borrower Representative requesting any Revolving Borrowing pursuant to Section 2.03 or such other form satisfactory to the Administrative Agent.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in Chicago (or, with respect to notices in respect of or Borrowings or payments of Loans made to the Netherlands Borrower, London) are authorized or required by law to remain closed; provided that, when used in connection with a Eurocurrency Loan, the term **"Business Day"** shall also exclude (a) with respect to a Eurocurrency Loan denominated in dollars, any day on which banks are not open for dealings in dollar deposits in the London interbank market and (b) with respect to a Loan denominated in Euros, (i) any day on which banks are not open for dealings in or Euro deposits in the London interbank market and (ii) any day on which the TARGET payment system is not open for the settlement of payment in Euro.

"Calculation Date" means (a) each day on which a Borrowing Base Certificate is required to be delivered pursuant to Section 5.01(h) of this Agreement and (b) any other Business Day which the Administrative Agent may determine in its sole discretion to be a Calculation Date.

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

"Carve Out" or **"Carveout"** has the meaning specified therefor in the Financing Order.

"Cash Management Order" has the meaning set forth in Section 4.01(z).

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

"CBFR", when used in reference to: (a) a rate of interest, refers to the CB Floating Rate, and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the CB Floating Rate.

"CEA Swap Obligation" means, with respect to any Loan Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof but excluding any employee benefit plan of such Person or its subsidiaries), of Equity Interests representing more than 30% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of Holdings by Persons who were neither (i) nominated by the board of directors of Holdings nor (ii) appointed by directors so nominated; (c) the acquisition of direct or indirect Control of Holdings by any Person or group; (d) Holdings shall cease to own, free and clear of all Liens or other encumbrances (other than (i) Liens created pursuant to the Collateral Documents, (ii) Liens securing the Existing Secured Obligations and (iii) Liens securing the Term Loan Obligations permitted hereunder so long as with respect to the ABL Priority Collateral such Liens are junior in priority to the Liens created pursuant to the Collateral Documents), directly or indirectly, all of the outstanding voting Equity Interests of each Borrower on a fully diluted basis; or (e) a Specified Change in Control shall occur.

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Bank'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** that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Chase" means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

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

"Closing Checklist" means that certain Closing Checklist attached hereto as Exhibit E.

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

"Collateral" means, collectively, all assets and interests and proceeds thereof now owned or hereafter acquired by Holdings, any Borrower or any Loan Guarantor in or upon which a Lien is granted or purported to be granted by such Person in favor of the Administrative Agent under any of the Collateral Documents. Without limitation of the foregoing, subject to the terms of the Interim Financing Order, Final Financing Order, the Intercreditor Agreement and the Carve Out, the Collateral shall include all proceeds of any and all Avoidance Actions.

"Collateral Access Agreement" has the meaning assigned to such term in the US Security Agreement (it being agreed that each "Collateral Access Agreement" entered into in connection with the Existing Credit Agreement shall be a Collateral Access Agreement hereunder).

"Collateral Documents" means, collectively, the US Collateral Documents, the Netherlands Collateral Documents, the Portugal Collateral Documents, the Mexico Collateral Documents and the Financing Orders.

"Collection Account" has the meaning assigned to the term "Collection Account" in the US Security Agreement.

"Commitment" means, with respect to each Lender, such Lender's Revolving Commitment and Revolving Netherlands Sublimit, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amounts of each Lender's Commitments are set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitments, as applicable.

"Commitment Schedule" means the Schedule attached hereto identified as such.

"Committees" means collectively, the Official Committee and any another committee formed, appointed or approved in any Bankruptcy Case.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative (or the Borrowers), in substantially the form of Exhibit G or another form which is acceptable to the Administrative Agent in its sole discretion.

"Compounded SOFR" means 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:

(1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that:

(2) if, and to the extent that, the Administrative Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) 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, further, that if the Administrative Agent decides that any such rate, methodology or convention determined in accordance with clause (1) or clause (2) 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."

"Consultant" means a Person acting as financial consultant of Debtors, which as of the Effective Date, the Consultant is Alvarez & Marsal; each such Consultant to be reasonably acceptable to the Administrative Agent and engaged by Debtors at Borrowers' sole cost and expense, and with respect to any Consultant engaged after the Effective Date, pursuant to the terms of an engagement agreement reasonably acceptable to the Administrative Agent.

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

"Corresponding Tenor" with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Interest Period with respect to the LIBO Rate.

"Covered Entity" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

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

"Covered Party" has the meaning assigned to it in Section 9.28.

"Credit Exposure" means, as to any Lender at any time, the sum of (a) such Lender's Revolving Exposure at such time, *plus* (b) an amount equal to its Applicable Percentage, if any, of the aggregate principal amount of Protective Advances outstanding at such time.

"CRO" means a chief restructuring officer engaged by the Debtors or any of them.

"Debtor" or "Debtors" has the meaning assigned to such term in the preamble.

"Default" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become 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" means any Lender, as determined by the Administrative Agent in its reasonable discretion, that (a) has failed to fund any portion of its Loans or participations in Letters of Credit or Swingline Loans in accordance with the terms and conditions of this Agreement within three (3) Business Days of the date required to be funded by it under this Agreement, (b) has notified any Borrower, the Administrative Agent, the Issuing Bank, the Swingline Lender or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its required funding obligations under this Agreement or required funding obligations under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans, (d) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, unless the subject of a good faith dispute, or (e) (i) is not Solvent or has a parent company that is not Solvent (solely for the purposes of this clause (e), references to "Loan Parties" in the definition of "Solvent" shall be deemed to be references to such Lender or parent company, as applicable), (ii) has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, or (iii) has become the subject of a Bail-In Action or has had a parent company that has become the subject of a Bail-In Action.

"Deposit Account Control Agreement" has the meaning assigned to such term in the US Security Agreement (it being agreed that each "Deposit Account Control Agreement" entered into in connection with the Existing Credit Agreement shall be a Deposit Account Control Agreement hereunder).

"DIP Liens" means the Liens granted to the Administrative Agent under the Loan Documents and authorized by the Financing Order.

"Disbursements Testing Date" has the meaning assigned to such term in the definition of Testing Date.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

"Disclosure Statement" has the meaning assigned to such term on Schedule 5.16.

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

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

"Document" has the meaning assigned to such term in the US Security Agreement.

"dollars" or "\$" refers to lawful money of the United States of America.

"Early Opt-in Election" means the occurrence of:

(1) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the 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 2.14 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate, and

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

"ECP" means an "eligible contract participant" as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

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

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

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

"Effective Date" means June 3, 2020.

"Eligible Accounts" means, at any time, with respect to each Borrower and any other US Loan Party or Netherlands Loan Party, the Accounts of such Borrower or other US Loan Party or Netherlands Loan Party which the Administrative Agent determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans, Swingline Loans and the issuance of Letters of Credit hereunder. Without limiting the Administrative Agent's discretion provided herein, Eligible Accounts shall not include any Account:

(a) which is not subject to a first priority perfected security interest in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance, (iii) a Lien securing the Existing Secured Obligations or (iv) a Lien expressly permitted under Section 6.02(j) securing the Term Loan Obligations permitted hereunder, in each case which does not have priority over (or equal to) the Lien in favor of the Administrative Agent;

(c) with respect to which (i) the scheduled due date is more than 60 days after the original invoice date, (ii) is unpaid more than 90 days after the date of the original invoice therefor, or (iii) which has been written off the books of such Borrower, US Loan Party or Netherlands Loan Party or otherwise designated as uncollectible; provided that the aggregate amount of accounts with a scheduled due date of more than 30 days after the original invoice date which remain unpaid after such scheduled due date shall not exceed \$1,000,000.

(d) which is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates, other than Accounts arising from customer chargebacks, are ineligible pursuant to clause (c) above;

(e) which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to Loan Parties exceeds 20% of the aggregate amount of Eligible Accounts of all Loan Parties;

(f) with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been materially breached or is not true in any material respect;

(g) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Administrative Agent which has been sent to the Account Debtor, (iii) represents a progress billing, (iv) is contingent upon the applicable US Loan Party's or Netherlands Loan Party's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (vi) relates to payments of interest;

(h) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such US Loan Party or Netherlands Loan Party;

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) which is owed by an Account Debtor which has currently (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) has had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws (other than post-petition accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Code and reasonably acceptable to the Administrative Agent), (iv) has admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(k) which is owed by any Account Debtor which has sold all or a substantially all of its assets;

(l) which is owed by an Account Debtor which (A) in the case of a US Loan Party, (i) does not maintain its chief executive office in the U.S. or Canada or (ii) is not organized under applicable law of the U.S., any state of the U.S., Canada, or any province of Canada or (B) in the case of a Netherlands Loan Party, (i) does not maintain its chief executive office in The Netherlands or any other Eligible European Jurisdiction satisfactory to the Administrative Agent or (ii) is not organized under applicable law of The Netherlands or any other Eligible European Jurisdiction satisfactory to the Administrative Agent unless, in each case, such Account is backed by a Letter of Credit acceptable to the Administrative Agent which is in the possession of, has been assigned to and is directly drawable by the Administrative Agent;

(m) which is owed in any currency other than U.S. dollars or Euros;

(n) which is owed by (i) the government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent which is in the possession of the Administrative Agent, or (ii) the government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 *et seq.* and 41 U.S.C. § 15 *et seq.*), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction;

(o) which is owed by any Affiliate, employee, officer or director of any Loan Party;

(p) which, for any Account Debtor, exceeds a credit limit determined by the Administrative Agent, to the extent of such excess;

(q) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which a Loan Party is indebted, but only to the extent of such indebtedness or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(r) which is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;

(s) which is evidenced by any promissory note, chattel paper, or instrument;

(t) which is owed by an Account Debtor (i) located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit the applicable US Loan Party or Netherlands Loan Party to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Loan Party has filed such report or qualified to do business in such jurisdiction or (ii) which is a Sanctioned Person;

(u) with respect to a US Loan Party or Netherlands Loan Party has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business, or any Account which was partially paid and the applicable Loan Party created a new receivable for the unpaid portion of such Account;

(v) which does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(w) which is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than the applicable US Loan Party or Netherlands Loan Party has or has had an ownership interest in such goods, or which indicates any party other than such Loan Party as payee or remittance party;

(x) which was created on cash on delivery terms;

(y) which, with respect to Accounts of any Netherlands Loan Party, have not been submitted for filing to the Dutch Tax Authority or evidence of such filing has not been provided by the Loan Parties to the Administrative Agent;

(z) which is subject to any limitation on assignment or other restriction (whether arising by operation of law, by agreement or otherwise) which would, under the local governing law of the contract creating such Account, have the effect of restricting the assignment for or by way of security or the creation of security over such Account generally, in each case unless the Administrative Agent has determined that such limitation is not enforceable; or

(aa) which the Administrative Agent determines may not be paid by reason of the Account Debtor's inability to pay or which the Administrative Agent otherwise determines is unacceptable for any reason whatsoever.

In determining the amount of an Eligible Account, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount or as otherwise taken into account in clause (p) or (r) above, (i) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that the applicable US Loan Party or Netherlands Loan Party may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by the applicable US Loan Party or Netherlands Loan Party to reduce the amount of such Account.

"Eligible European Jurisdiction" means each of Austria, Belgium, Denmark, Finland, France, Germany, Italy, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom; provided that the Administrative Agent may, in its sole discretion, remove one or more of the countries comprising the Eligible European Jurisdictions and subsequently add one or more countries back as Eligible European Jurisdictions.

"Eligible Inventory" means, at any time, with respect to each Borrower and any other US Loan Party or Netherlands Loan Party, the Inventory of such Borrower, US Loan Party or Netherlands Loan Party which the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans, Swingline Loans and the issuance of Letters of Credit hereunder. Without limiting the Administrative Agent's discretion provided herein, Eligible Inventory shall not include any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of the Administrative Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Administrative Agent, (ii) a Permitted Encumbrance, (iii) a Lien securing the Existing Secured Obligations or (iv) a Lien expressly permitted under Section 6.02(j) securing the Term Loan Obligations permitted hereunder, in each case which does not have priority over (or equal to) the Lien in favor of the Administrative Agent;

(c) which is, in the Administrative Agent's Permitted Discretion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business;

(d) with respect to which any covenant, representation, or warranty contained in this Agreement, the US Security Agreement or the Netherlands Security Agreement has been materially breached or is not true in any material respect and which does not conform in all material respects to all standards imposed by any Governmental Authority;

(e) in which any Person other than a Borrower, US Loan Party or Netherlands Loan Party shall (i) have any direct or indirect ownership, interest or title to such Inventory or (ii) be indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;

(f) which is not finished goods, raw materials, packaging and shipping materials or which constitutes work-in-process, spare or replacement parts, subassemblies, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(g) which is not located in the U.S. or, with respect to Inventory of a Netherlands Loan Party, The Netherlands or is in transit with a common carrier from vendors and suppliers , provided that, up to \$2,000,000 of Inventory in transit from vendors and suppliers may be included as eligible pursuant to this clause (g) so long as (i) the Administrative Agent shall have received (1) a true and correct copy of the bill of lading and other shipping documents for such Inventory, (2) evidence of satisfactory casualty insurance naming the Administrative Agent as loss payee and otherwise covering such risks as the Administrative Agent may reasonably request, and (3) if the bill of lading is (A) non-negotiable, a duly executed Collateral Access Agreement from the applicable customs broker for such Inventory or (B) negotiable, confirmation that the bill is issued in the name of the applicable Borrower, US Loan Party or Netherlands Loan Party and consigned to the order of the Administrative Agent, and an acceptable agreement has been executed with the applicable Borrower's, US Loan Party's or Netherland's Loan Party's customs broker, in which the customs broker agrees that it holds the negotiable bill of lading as agent for the Administrative Agent and has granted the Administrative Agent access to the Inventory and (ii) the common carrier is not an Affiliate of the applicable vendor or supplier;

(h) which is located in any location leased by a Borrower or US Loan Party or Netherlands Loan Party unless (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (ii) a Reserve for three months of rent, charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion;

(i) which is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document (other than bills of lading to the extent permitted pursuant to clause (g) above), unless (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (ii) a Reserve for three months of charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion;

(j) which is being processed offsite at a third party location or outside processor, or is in-transit to or from said third party location or outside processor;

(k) which is a discontinued product or component thereof;

(l) which is the subject of a consignment by a Borrower or US Loan Party or Netherlands Loan Party as consignor;

(m) which is perishable;

(n) which contains or bears any intellectual property rights licensed to the applicable Borrower or US Loan Party or Netherlands Loan Party unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement; or

(o) which is not reflected in a current perpetual inventory report of the applicable Borrower or US Loan Party or Netherlands Loan Party (unless such Inventory is reflected in a report to the Administrative Agent as "in transit" Inventory);

(p) for which reclamation rights have been asserted by the seller until such Inventory is in the seller's possession;

(q) which is subject to any retention of title claim;

(r) which has been acquired from a Sanctioned Person; or

(s) which the Administrative Agent otherwise determines is unacceptable for any reason whatsoever.

"Employee Benefit Plan" means an employee benefit plan within the meaning of Section 3(3) of ERISA, other than a Multiemployer Plan, to which any Loan Party has any liability to make contributions including as the result of being an ERISA Affiliate.

"Environmental Laws" means all applicable laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower or any Subsidiary resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests (however designated) in a Person, 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.

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

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to meet the funding requirements of Section 412 and 430 of the Code or Section 302 and 303 of ERISA; (c) the filing pursuant to Section 412(d) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be insolvent, within the meaning of Title IV of ERISA.

"ERISA Reserve" means a Reserve in the amount of \$2,000,000 on the date hereof, as such Reserve may be increased or decreased in the Administrative Agent's Permitted Discretion.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

"Euro" or "€" means the single currency of the Participating Member States.

"Eurocurrency", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"European Collateral Agent" means J.P. Morgan Europe Limited, as administrative agent with respect to the Netherlands Collateral Documents and the Portugal Collateral Documents.

"Event of Default" has the meaning assigned to such term in Article VII.

"Exchange Rate" means, with respect to Euros on a particular date, the equivalent of such amount in dollars determined by using the rate of exchange for the purchase of dollars with Euros in the London foreign exchange market at or about 11:00 a.m. London time (or New York time, as applicable) on a particular day as displayed by ICE Data Services as the "ask price", or as displayed on such other information service which publishes that rate of exchange from time to time in place of ICE Data Services (or if such service ceases to be available, the equivalent of such amount in dollars as determined by the Administrative Agent using any method of determination it deems appropriate in its sole discretion).

"Excluded Swap Obligation" means, with respect to guaranty by any Loan Guarantor, any CEA Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Loan Guarantor of, or the grant by such Loan Guarantor of a security interest to secure, such CEA Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Guarantor's failure for any reason to constitute an ECP at the time the Guarantee of such Loan Guarantor or the grant of such security interest becomes or would become effective with respect to such CEA Swap Obligation. If a CEA Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such CEA Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes" means with respect to each Recipient any of the following Taxes imposed on or with respect to such Recipient or required to be withheld or deducted from payment to such Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Foreign Lender (other than an assignee pursuant to a request by a Borrower under Section 2.19(b)), any U.S. federal or Netherlands withholding 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) or any Tax that is attributable to such Foreign Lender's failure to comply with Section 2.17(e), except to the extent that either (i) 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 Loan Parties with respect to such Tax pursuant to Section 2.17(a) or (ii) the withholding tax that is imposed by a Paying Guarantor's jurisdiction is higher than the amount that would have been imposed by the applicable Borrower's jurisdiction, in which case to such extent it shall not be deemed as Excluded Taxes; (c) any U.S. federal withholding Taxes (including backup withholding) imposed as the result of a Lender's failure to comply with Section 2.17(g); (d) any Taxes imposed under FATCA; and (e) any Taxes that become payable under the laws of the Netherlands as a result of a Recipient having a substantial interest (*aanmerkelijk belang*) as defined in the Netherlands Income Tax Act 2001 (*Wet inkomenbelasting 2001*) in a Netherlands Loan Party.

"Existing Administrative Agents" means the Existing US Administrative Agent and the Existing Netherlands Administrative Agent

"Existing Banking Services Obligations" means "Banking Services Obligations" as defined in the Existing Credit Agreement.

"Existing Credit Agreement" means that certain Amended and Restated Credit Agreement, dated as of February 8, 2010 by and among Holdings, the Borrowers, the other Loan Parties party thereto from time to time, the Existing Lenders and the Existing Administrative Agents, as amended from time to time.

"Existing Intercreditor Agreement" means the Intercreditor Agreement, dated as of April 9, 2014 among the US Borrower, Holdings, the other US Loan Parties party thereto, Existing US Administrative Agent and Existing Term Loan Agent, as the same has been amended, restated or otherwise modified from time to time prior to the date hereof.

"Existing Lender" means a Person holding loans and commitments under the Existing Credit Agreement, solely in their capacity as such, and not in their capacity as a "Lender" hereunder, if applicable.

"Existing Letters of Credit" has the meaning set forth in Section 2.06(k).

"Existing Loan Documents" means "Loan Documents" as defined in the Existing Credit Agreement.

"Existing Netherlands Administrative Agent" means J.P. Morgan Europe Limited, as administrative agent with respect to the Existing Netherlands Secured Obligations under the Existing Credit Agreement.

"Existing Netherlands Secured Obligations" means the Existing Secured Obligations constituting "Netherlands Obligations" under the Existing Credit Agreement and Existing Banking Services Obligations provided to the Netherlands Loan Parties under the Existing Credit Agreement. For the avoidance of doubt the Existing Netherlands Secured Obligations (including, without limitation, Netherlands Loans (as defined under the Existing Credit Agreement) outstanding on the date hereof with a principal balance equal to €15,500,000.00 on the date hereof) shall remain outstanding under, and subject to the terms of, the Existing Credit Agreement (but the US Loan Parties and each of the other Loan Parties are guaranteeing such Existing Netherlands Secured Obligations pursuant to the Loan Guaranty and the Portugal Guarantee, as applicable, and the obligations in respect of such guarantees are obligations of such Loan Parties hereunder or under the Portugal Guarantee, as applicable).

"Existing Secured Obligations" means all outstanding principal, accrued interest, accrued fees and expenses and any other indebtedness and amounts owing to the Existing Administrative Agents and the Existing Lenders (or the agents therefor) under the Existing Loan Documents (in any event excluding, for the avoidance of doubt, upon the Effective Date, the reimbursement obligations with respect to the Existing Letters of Credit that are deemed to be reissued as Letters of Credit hereunder on the Effective Date and the Existing Banking Services Obligations and the Terminated Swap Obligations which are each deemed to be Secured Obligations hereunder on the Effective Date).

"Existing Term Loan Agent" means Cortland Capital Market Services, LLC, as the administrative agent and collateral agent under the Existing Term Loan Agreement.

"Existing Term Loan Agreement" means the Senior Secured Credit Agreement dated April 9, 2014 by and among US Borrower, Holdings, the lenders from time to time party thereto, and Existing Term Loan Agent, as the same has been amended, restated or otherwise modified from time to time prior to the date hereof.

"Existing Term Loan Documents" means the "Loan Documents" as defined in the Existing Term Loan Agreement.

"Existing Term Loan Obligations" means the "Loan Obligations" as defined in the Existing Term Loan Agreement, but in each case solely to the extent outstanding on the Effective Date.

"Existing US Administrative Agent" means JPMorgan Chase Bank, N.A., in its capacity as administrative agent with respect to the US Loans under the Existing Credit Agreement.

"Existing US Secured Obligations" means the Existing Secured Obligations constituting "US Obligations" under the Existing Credit Agreement (in any event excluding, for the avoidance of doubt, upon the Effective Date, the reimbursement obligations with respect to the Existing Letters of Credit that are deemed to be reissued as Letters of Credit hereunder on the Effective Date and the Existing Banking Services Obligations provided to the US Loan Parties and the Terminated Swap Obligations which are each deemed to be US Secured Obligations hereunder on the Effective Date).

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

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the NYFRB 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 the purposes of this Agreement.

"Federal Reserve Bank of New York's Website" means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

"Fee Letter" means that certain Fee Letter dated as of the date hereof among the Administrative Agent and the Borrowers, as the same may be amended, restated or otherwise modified from time to time.

"Filing Date" has the meaning assigned to such term in the preamble.

"Final Financing Order" means the "Final Order" as defined in the Interim Financing Order, together with all amendments, modifications and supplements to such Final Financing Order, in each case, in form and substance satisfactory to the Debtors and the Administrative Agent (and, solely to the extent such "Final Order" or amendments, modifications or supplements thereto (x) do not permit a rollup of all Existing US Secured Obligations under the Existing Credit Agreement into US Secured Obligations hereunder, the Required Lenders, or (y) would not contain (or would result in a modification of) provisions substantially consistent with the provisions of paragraph 24 (Discharge) of the Interim Financing Order with respect to the Secured Obligations or paragraph 39 (Order Governs) of the Interim Financing Order, each affected Lender (it being understood that each Lender would be considered affected with respect to paragraph 23 (if affecting the Secured Obligations of such Lender) and paragraph 39)), in their respective sole discretion.

"Financial Officer" means the chief financial officer, principal accounting officer, treasurer, assistant treasurer, controller or other executive officer of a Loan Party.

"Financing Order" means (a) until entry of the Final Financing Order, the Interim Financing Order, and (b) from and after entry of the Final Financing Order, the Final Financing Order.

"First Day Hearing" means the first day of the hearing scheduled on which entry of the Interim Financing Order shall be heard.

"Foreign Lender" means, with respect to a Borrower, any Lender that is organized under the laws of a jurisdiction other than a jurisdiction in which the Borrower is organized or a resident for Tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" means any Subsidiary organized under the law of any jurisdiction outside the United States of America.

"Funding Account" means the deposit account(s) of each Borrower to which the Administrative Agent and the Lenders are authorized by the Borrowers to transfer the proceeds of any Borrowings by such Borrower requested or authorized pursuant to this Agreement.

"GAAP" means generally accepted accounting principles in the United States of America.

"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 or other public entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Grants of Security Interests in Intellectual Property" means, collectively, each Grant of Security Interest in Patent Rights, each Grant of Security Interest in Trademark Rights and each Grant of Security Interest in Copyright Rights to be filed with the United States Patent and Trademark Office (it being agreed that each "Grants of Security Interests in Intellectual Property" entered into in connection with the Existing Credit Agreement shall be a Grants of Security Interests in Intellectual Property hereunder).

"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) without duplication of any other Guarantee of such Indebtedness or obligation, 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 endorsements for collection or deposit in the ordinary course of business.

"Guaranteed Obligations" has the meaning assigned to such term in Section 10.01.

"Hazardous Materials" means 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, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Holdings" means Libbey Inc., a Delaware corporation.

"Hong Kong Share Mortgage" means that certain Share Mortgage dated on or after the Effective Date between US Borrower, as mortgagor, and the Administrative Agent with respect to the issued share capital of Libbey Asia Limited.

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

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (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 accounts payable and accrued liabilities with respect to obligations owing to employees 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, provided, however, that such Indebtedness, if not assumed, shall be valued at the lower of fair market value of such property on the amount of such Indebtedness incurred, (f) all Guarantees by such Person of Indebtedness of others, (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) obligations under any liquidated earn-out and (k) any other Off-Balance Sheet Liability. 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. For the avoidance of doubt, to the extent that prior to the Filing Date, any Mexico Loan Guarantor has agreed with a counterparty to extend the payment terms of accounts payable to such counterparty, any accounts payable to such counterparty shall be deemed not to constitute Indebtedness notwithstanding any change in the accounting treatment of such accounts payable.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Initial Approved Budget" means a 13-week cash flow forecast setting forth all forecasted receipts and disbursements of the Debtors and their Subsidiaries on a weekly basis during such 13-week period which shall include, among other things, available cash, revenue, cash flow, trade payables and ordinary course expenses, total expenses and capital expenditures, fees and expenses relating to this Agreement and the transactions contemplated hereby and the Term Loan Agreement, vendor disbursements, liquidity, Availability under this Agreement, net operating cash flow and net cash flow, fees and expenses relating to the Bankruptcy Cases (including, for the avoidance of doubt, professional fees), working capital and other general corporate financial needs. Such Initial Approved Budget shall be in the form set forth in Exhibit M hereto. For all purposes hereunder, the Initial Approved Budget shall constitute an "Approved Budget".

"Insolvency Regulation" means the Council Regulation (EC) No. 848/2015 of 20 May 2015 on Insolvency Proceedings.

"Intellectual Property" means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Intercreditor Agreement" means the Amended and Restated Intercreditor Agreement, dated as of the date hereof among the US Borrower, Holdings, the other Loan Parties party thereto, Administrative Agent, the Existing Administrative Agents, Term Loan Agent and Existing Term Loan Agent, and the other parties thereto from time to time, as the same has been and may further be amended, restated or otherwise modified from time to time, which amends and restates in its entirety the Existing Intercreditor Agreement.

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

"Interim Financing Order" means collectively, the order of the Bankruptcy Court substantially in the form of Exhibit N (except as may otherwise be agreed in writing or on the record by the Debtors and the Administrative Agent at the interim hearing with respect to such order in the Bankruptcy Cases) entered in the Bankruptcy Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which order is in effect and not stayed, in form and substance satisfactory to the Debtors, the Administrative Agent and Required Lenders, together with all extensions, modifications, supplements and amendments thereto, in each case, in form and substance satisfactory to the Debtors and the Administrative Agent (and, solely to the extent such extension, modification, amendment or supplement thereto would modify the provisions of paragraph 24 (Discharge) of the Interim Financing Order or paragraph 39 (Order Governs) of the Interim Financing Order, each affected Lender (it being understood that each Lender would be considered affected with respect to paragraph 24 (if affecting the Secured Obligations of such Lender) or paragraph 39)), in their respective sole discretion, which, among other matters but not by way of limitation, authorizes, on an interim basis, Debtors to execute and perform under the terms of this Agreement and the other Loan Documents.

"Interest Payment Date" means (a) with respect to any CBFR Loan (other than a Swingline Loan), the first Business Day of each April, July, October and January and the Maturity Date, (b) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and the Maturity Date and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid and the Maturity Date.

"Interest Period" means with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one month thereafter, as the Borrower Representative may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurocurrency Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurocurrency Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interpolated Rate" means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided that, if any Interpolated Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"Inventory" has the meaning assigned to such term in the US Security Agreement and, with respect to the Netherlands Loan Parties, "Movables" as defined in the Deed of Disclosed Pledges of Movables in so far as it constitutes inventory for the purposes hereof.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding bona fide accounts receivable arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"Investment Banker" has the meaning set forth in Section 5.17.

"Issuing Bank" means Chase, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.06(i) or if Chase is unable to issue a requested Letter of Credit, subject to Chase's consent (not to be unreasonably withheld), any other Lender that upon request by the Borrower Representative consents to be an Issuing Bank hereunder. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"Judgment Currency" has the meaning set forth in Section 9.18(b).

"LC Collateral Account" has the meaning assigned to such term in Section 2.06(j).

"LC Disbursement" means a payment made by the Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the US Borrower at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time.

"Lenders" means the Persons listed on the Commitment Schedule and any other Person that shall have become a party hereto pursuant an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

"Letter of Credit" means any letter of credit issued or deemed issued pursuant to this Agreement.

"Libbey Europe Sublimit" means an amount equal to \$55,000,000.

"Libbey Mexico" has the meaning set forth in Section 3.09.

"Libbey Mexico Tax Assessment" has the meaning set forth in Section 3.09.

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

"LIBO Screen Rate" means, for any day and time, with respect to any Eurocurrency Borrowing for any applicable Interest Period or for any CBFR Borrowing, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for the purposes of this Agreement; provided, further that, notwithstanding the foregoing, with respect to the definition of "Adjusted One Month LIBOR Rate" only, if the LIBO Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, trust agreement, lien, pledge, hypothecation, encumbrance, attachment, charge, seizure or security interest in, on or of such asset, including, without limitation, all "liens" as defined by Section 101(37) of the Bankruptcy Code, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Documents" means this Agreement, the Reaffirmation Agreement, the Fee Letter, any promissory notes issued pursuant to the Agreement, any Letter of Credit applications, the Collateral Documents, the Intercreditor Agreement, the Loan Guaranty, the Portugal Guarantee, the Netherlands Subordination Agreement, any Collateral Access Agreement, any Deposit Account Control Agreement, and all Borrowing Base Certificates and Borrowing Notices and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lenders and including all other agreements, instruments, documents and certificates, whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Guarantor" means each of the US Loan Guarantors, the Netherlands Loan Guarantors, the Mexico Loan Guarantors and the Portugal Loan Guarantor.

"Loan Guaranty" means Article X of this Agreement; provided that with respect to the Portugal Loan Guarantor, the "Loan Guaranty" shall mean the Portugal Guarantee.

"Loan Parties" means the US Loan Parties, the Netherlands Loan Parties, the Mexico Loan Guarantors and the Portugal Loan Guarantor.

"Loans" means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans and Protective Advances.

"Local Time" means, with respect to any Borrowing or payment made by the US Borrower or the Netherlands Borrower, Chicago time and London time, respectively.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, liabilities (actual or contingent) or financial condition of Holdings and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under any Loan Document to which any of the Loan Parties is a party, (c) the Administrative Agent's Liens (on behalf of itself and the Lenders) on the Collateral or the priority of such Liens, or (d) the rights and remedies of the Administrative Agent, the Issuing Bank or the Lenders hereunder or any other Loan Document. For the avoidance of doubt, solely for purposes of clause (a) hereof, "Material Adverse Effect" shall expressly exclude (i) any matters disclosed in any "first day" pleadings or declarations and (ii) the effect of filing the Bankruptcy Cases, the events and conditions related to, resulting from and/or leading up thereto and the effects thereon and any action required to be taken under the Loan Documents or the Financing Order.

"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of a Swap Agreement of any Loan Party or any of its Subsidiaries in an aggregate principal amount exceeding \$500,000. For purposes of determining Material Indebtedness, the "obligations" of Holdings or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that Holdings or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

"Maturity Date" means the earliest of (a) the date that is one hundred eighty (180) days after the Filing Date, (b) the consummation of a sale of all or substantially all of the Debtor's assets, (c) if the Final Financing Order has not been entered, the date that is thirty-five (35) days after the Filing Date (or such later date to which the deadline for the entry of the Final Financing Order may be extended in accordance with the terms of Section 5.16), (d) the Plan Effective Date of a Plan of Reorganization, (e) the Maturity Date (under and as defined in the Term Loan Agreement) or (f) any earlier date on which the Commitments are permanently reduced to zero or otherwise terminated pursuant to the terms hereof.

"Maximum Liability" has the meaning assigned to such term in Section 10.10.

"Mexico" means the United Mexican States (*Estados Unidos Mexicanos*).

"Mexico Collateral" means, collectively, any and all property of whatever kind and nature, owned, leased or operated by a Person covered by the Mexico Collateral Documents and any and all other property of whatever kind and nature of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Administrative Agent (or any other designated Person under the Intercreditor Agreement), on behalf of itself and the Lenders and their Affiliates, to secure any Secured Obligations.

"Mexico Collateral Documents" means, collectively, the Mexico Non-Possessory Pledge Agreement, the Mexico Equity Interest Pledge Agreement, the Mexico Security Trust Agreement and all other documents, instruments and agreements governed by the laws of Mexico now or hereafter securing (or giving with intent to secure) a Lien upon the Mexico Collateral as security for the Secured Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Mexico Equity Interest Pledge Agreement" means, collectively, one or more Mexican law-governed Non-Possessory Equity Pledge Agreements (*Contratos de Prenda sin Transmisión de Posesión sobre Partes Sociales*), in form and substance satisfactory to the Administrative Agent, pursuant to which the Persons holding any Equity Interests issued by the Mexico Loan Guarantors and/or owners of the equity interests of the Mexico Loan Guarantors, as pledgors, have pledged and granted a first priority Lien in favor of the Administrative Agent (or any other designated Person under the Intercreditor Agreement), as pledgee, with the consent and acknowledgement of the corresponding Mexico Loan Guarantor, over all of the present and future assets (*Bienes Pignorados*, as defined therein), except as otherwise transmitted to the Mexico Security Trustee and subject to the Mexico Security Trust Agreement, and given as security for the Secured Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Mexico Loan Guarantors" means the US Borrower's Subsidiaries that are organized under the laws of Mexico (other than Crisa Libbey, S.A. de C.V.) party to this Agreement and the Mexico Collateral Documents.

"Mexico Non-Possessory Pledge Agreement" means, collectively, one or more Mexican law-governed Non-Possessory Pledge Agreements (*Contratos de Prenda sin Transmisión de Posesión*), in form and substance satisfactory to the Administrative Agent, pursuant to which the corresponding Mexico Loan Guarantors, as pledgors, have pledged and granted a first priority Lien in favor of the Administrative Agent (or any other designated Person under the Intercreditor Agreement), as pledgee, over all or substantially all of the present and future assets (*Bienes Pignorados*, as defined therein), except as otherwise transmitted to the Mexico Security Trustee and subject to the Mexico Security Trust Agreement or covered by the Mexico Equity Interest Pledge Agreement, and given as security for the Secured Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Mexico Security Trust Agreement" means, one Mexican law-governed Irrevocable Transfer of Title and Security Trust Agreement with Reversion Right (*Contrato de Fideicomiso Irrevocable Traslativo de Dominio y de Garantía con Derechos de Reversión*), in form and substance satisfactory to the Administrative Agent, to be entered into by and among each corresponding Loan Guarantor, as settlors, the Mexico Security Trustee, as trustee, the Administrative Agent (or any other designated Person under the Intercreditor Agreement) and Term Loan Agent, as first and second place beneficiaries, respectively, pursuant to which the corresponding settlors, have transferred or will transfer to the Mexico Security Trustee all of the Mexico Collateral identified therein to form part of the trust estate (*Patrimonio del Fideicomiso*, as defined therein), and given as security for the Secured Obligations, except to the extent otherwise covered by the Mexico Non-Possessory Pledge Agreement and the Mexico Equity Interest Pledge Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Mexico Security Trustee" means any Mexican banking institution acceptable to the Administrative Agent, acting as trustee under the Mexico Security Trust Agreement.

"Milestones" has the meaning set forth in Section 5.16.

"Minimum Aggregate Availability" has the meaning set forth in Section 6.18.

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

"Mortgages" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, on real property of a Loan Party, including any amendment, modification or supplement thereto (including any Netherlands Mortgage, any US Mortgage and the Mexico Security Trust Agreement, with respect to any real property located in Mexico owned by the Mexico Loan Guarantors).

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Netherlands Availability" means, with respect to the Netherlands Borrower, at any time, an amount equal to (a) the lesser of the Revolving Netherlands Sublimit and the Netherlands Borrowing Base at such time minus (b)(i) the aggregate amount of the Revolving Netherlands Exposures of all Revolving Lenders at such time, (ii) the "Revolving Netherlands Exposure" (as defined in the Existing Credit Agreement), and (iii) the principal amount of any Reinstated Existing Netherlands Secured Obligations in respect to "Revolving Netherlands Exposure" (as defined in the Existing Credit Agreement); provided that such Netherlands Availability will at no time exceed the difference of (x) the sum of the total Revolving Commitments (less Reserves (other than Reserves which Administrative Agent elects not to deduct for such purpose in its sole discretion)) minus (y) the Aggregate Credit Exposure and the "Aggregate Credit Exposure" (as defined in the Existing Credit Agreement) at such time; and provided, further, that such Netherlands Availability will at no time exceed the difference of (i) the Libbey Europe Sublimit minus (ii) the aggregate amount of the Credit Exposures and the "Credit Exposures" (as defined in the Existing Credit Agreement) of all Lenders at such time relating to the Netherlands Borrower at such time.

"Netherlands Bank Account Establishment Trigger Event" is defined in the definition of Restriction Period Grid.

"Netherlands Borrower" means Libbey Europe B.V., a limited liability company incorporated in The Netherlands.

"Netherlands Borrowing Base" means, at any time, the sum of (a) 85% of the Netherlands Loan Parties' Eligible Accounts at such time, *plus* (b) the lesser of (i) 65% of the Netherlands Loan Parties' Eligible Inventory, valued at the lower of cost or market value, determined on a first-in-first-out basis, at such time and (ii) the product of 85% multiplied by the Netherlands Loan Parties' Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent multiplied by the Netherlands Loan Parties' Eligible Inventory, valued at the lower of cost or market value, determined on a first-in-first-out basis, at such time, *minus* (c) Reserves without duplication of the Reserves with respect to the US Borrowing Base related to the Netherlands Loan Parties. The maximum amount of the Netherlands Borrowing Base attributable to Inventory is \$12,500,000. The Administrative Agent may, in its Permitted Discretion, reduce the advance rates set forth above, adjust Reserves or reduce one or more of the other elements used in computing the Netherlands Borrowing Base.

"Netherlands Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit D or another form which is acceptable to the Administrative Agent in its sole discretion.

"Netherlands Collateral" means any and all property owned, leased or operated by a Person covered by the Netherlands Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders, to secure any Secured Obligations.

"Netherlands Collateral Documents" means, collectively, the Netherlands Security Agreement, the Netherlands Mortgages and any other documents granting a Lien upon the Netherlands Collateral (or equity interests issued by a Netherlands Loan Party) as security for payment of the Secured Obligations and the Existing US Secured Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Netherlands Collection Account" means the collection account maintained by the Netherlands Borrower with the Administrative Agent or other bank acceptable to the Administrative Agent, and, in each case, designated as such by Administrative Agent.

"Netherlands Financial Supervision Act" means the Netherlands Financial Supervision Act (*Wet op het financieel toezicht*).

"Netherlands Fiscal Unity" means any fiscal unity for Dutch corporate income tax or Dutch value added tax purposes.

"Netherlands Intercompany Pledge" means the pledge by Libbey Mexico to Libbey Mexico Holdings B.V. of the Equity Interests of Crisa Libbey México, S. de R.L. de C.V. pursuant to the Netherlands Intercompany Note and the Netherlands Intercompany Pledge Agreement, which shall be subject in all respects to the terms of the Netherlands Subordination Agreement.

"Netherlands Intercompany Pledge Agreement" means that certain non-possessory pledge agreement dated as of April 22, 2016 between Libbey Mexico, as pledgor, and Libbey Mexico Holdings B.V., as pledgee, which agreement shall be subject in all respects to the terms of the Netherlands Subordination Agreement.

"Netherlands Intercompany Note" means that certain intercompany loan agreement dated April 30, 2011, and amended on April 22, 2016, between Libbey Mexico, as debtor, and Libbey Mexico Holdings B.V., as creditor, which agreement shall be subject in all respects to the terms of the Netherlands Subordination Agreement.

"Netherlands Loan Guarantors" means the US Borrower's Subsidiaries that are organized under the laws of The Netherlands (other than the Netherlands Borrower).

"Netherlands Loan Party" means the Netherlands Borrower, each Netherlands Loan Guarantor party hereto and the Netherlands Security Agreement.

"Netherlands Loans" means the loans and advances made by the Lenders to the Netherlands Borrower pursuant to this Agreement, including Protective Advances made with respect to the Netherlands Borrower.

"Netherlands Mortgage" means each Mortgage in respect of owned real property located in the Netherlands of a Netherlands Loan Party.

"Netherlands Obligations" means all obligations in respect of unpaid principal of and accrued and unpaid interest (including without limitation any post-petition interest, whether allowed or not) on the Netherlands Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of any Netherlands Loan Party to the Lenders or to any Lender, the Administrative Agent or any indemnified party arising under any Loan Document.

"Netherlands Secured Obligations" means all Netherlands Obligations, together with all (i) Banking Services Obligations of the Netherlands Borrower or any Netherlands Loan Guarantor and (ii) Swap Obligations of the Netherlands Borrower or any Netherlands Loan Guarantor owing to one or more Lenders or their respective Affiliates; provided that (a) with respect to any transaction relating to such Banking Services Obligation or Swap Obligation entered into after the Effective Date, such Banking Services Obligation or Swap Obligation shall not constitute a Netherlands Secured Obligation entitled to the benefits of the Collateral Documents unless the Lender party thereto (other than Chase) shall have received the prior written consent of the Administrative Agent or (b) with respect to any transaction relating to such Banking Services Obligation or Swap Obligation entered into on or prior to the Effective Date, the Lender party thereto (other than Chase) shall have delivered written notice to the Administrative Agent prior to the Effective Date that such a transaction has been entered into and that it constitutes a Netherlands Secured Obligation entitled to the benefits of the Collateral Documents.

"Netherlands Security Agreement" means each of that certain Dutch Security Agreement, dated on or about the date hereof, between the Netherlands Borrower, the Netherlands Loan Guarantors, the US Borrower and the Administrative Agent (or an Affiliate thereof) and any other pledge or security agreement entered into, on or after the date of this Agreement by the Netherlands Borrower or any Netherlands Loan Guarantor or with respect to the equity interests issued by any of the Netherlands Loan Parties (as required by this Agreement or any other Loan Document) as the same has been and may further be amended, restated or otherwise modified from time to time.

"Netherlands Subordination Agreement" means that certain Subordination Agreement dated as of the Effective Date between the Existing Netherlands Administrative Agent, the Administrative Agent, Term Loan Agent, Libbey Mexico Holdings B.V. and Libbey Mexico.

"Netherlands Trigger Event" is defined in the definition of Restriction Period Grid.

"Net Orderly Liquidation Value" means, with respect to Inventory of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent by an appraiser acceptable to the Administrative Agent, net of all costs of liquidation thereof.

"Net Proceeds" means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, net of (b) the sum of (i) all reasonable professional and consulting fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all Taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer).

"Non-Consenting Lender" has the meaning assigned to such term in Section 2.19(b).

"Non-Mortgaged Property" has the meaning set forth in Section 3.05.

"Non-Paying Guarantor" has the meaning assigned to such term in Section 10.11.

"Non-Restricted Deposit Accounts" means (a) payroll and fiduciary accounts, accounts of Subsidiaries that are not Loan Parties, employee benefits, withholding tax, escrow and customs accounts, in each case solely as long as any such account is used exclusively for the purposes described in this clause (a), and (b) accounts for retail stores, petty cash accounts and other purposes (with an aggregate amount on deposit in all such accounts specified in this clause (b) not to exceed \$100,000).

"NYFRB" means the Federal Reserve Bank of New York.

"NYFRB Rate" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Obligated Party" has the meaning assigned to such term in Section 10.02.

"Obligations" means the US Obligations and/or the Netherlands Obligations, as the context requires. Unless otherwise specified, "Obligations" shall refer to the Obligations with respect to the Borrowers.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"Off-Balance Sheet Liability" of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called "synthetic lease" transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such Person (other than operating leases). For purposes of this Agreement, the outstanding principal amount of Off-Balance Sheet Liabilities shall be deemed equal to the amount of those liabilities that would be outstanding if the transaction was structured as an on balance sheet secured financing.

"Official Committee" means the official committee of unsecured creditors formed, appointed or approved in the Bankruptcy Cases.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Foreign Guarantor" means, collectively, the Mexico Loan Guarantors and the Portugal Loan Guarantor.

"Other Taxes" means any and all present or future stamp, documentary, court, intangible, recording, filing or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Overnight Bank Funding Rate" means, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions (as such composite rate shall be determined by the NYFRB as set forth on the Federal Reserve Bank of New York's Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"Overnight LIBO Rate" means a rate per annum equal to the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate) for overnight deposits in dollars or Euros as displayed on the applicable Thomson Reuters screen page (currently page LIBOR01 or LIBOR02 (as applicable)) (or, in the event such rate does not appear on a page of the Thomson Reuters screen, on the appropriate page of such other information service that publishes such rate as shall be reasonably selected by the Administrative Agent from time to time in its reasonable discretion) at approximately 11:00 a.m., London time, on such day; provided that if an Overnight LIBO Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for all purposes of this Agreement.

"Parallel Debt" means each DIP Netherlands Parallel Debt as defined in Section 9.19, each DIP US Parallel Debt as defined in Section 9.20 and each Prepetition Parallel Debt as defined in Section 9.21.

"Participant" has the meaning set forth in Section 9.04.

"Participant Register" has the meaning set forth in Section 9.04.

"Participating Member State" means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to the Economic and Monetary Union.

"Paying Guarantor" has the meaning assigned to such term in Section 10.11.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Discretion" means a determination made in good faith and in the exercise of commercially reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Encumbrances" means:

(a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;

(c) subject to the Financing Order and the terms thereof, pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, customs duties, and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments after the Filing Date that do not constitute an Event of Default under clause (k) of Article VII so long as such judgments are stayed during the pendency of the Bankruptcy Cases;

(f) survey exceptions, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of Holdings or any of its Subsidiaries;

(g) (1) non-exclusive licenses and sublicenses of Intellectual Property granted in the ordinary course of business, provided that no such license or sublicense may be granted that would reasonably be expected to constitute an abandonment of any Loan Party's or any Subsidiary's trade name or trademarks or other similar Intellectual Property if such abandonment would materially interfere with the business of Holdings and its Subsidiaries; or (2) leases or subleases not otherwise prohibited under this Agreement and the other Loan Documents granted to others not interfering in any material respect in the business of Holdings or any of its Subsidiaries;

(h) Liens arising solely by virtue of any statutory or common law provisions, or on the basis of Dutch general banking conditions (*algemene bankvoorraarden*) relating to banker's Liens, rights of set-off or similar rights and remedies with respect to the deposit accounts constituting Non-Restricted Deposit Accounts or set forth on Schedule 6.02;

(i) Liens arising from precautionary Uniform Commercial Code financing statement filings regarding operating leases permitted hereunder describing the leased property and proceeds thereof as collateral; and

(j) any interest or title of a lessor in any Capitalized Lease Obligations permitted under Section 6.01 or any operating lease entered into by or binding upon a Loan Party or a Subsidiary in the ordinary course of its business and covering only the asset so leased and the personal property thereon and proceeds thereof;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Investments" means:

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

(b) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition of the United States (provided that the full faith and credit of the United States is pledged in support thereof) and, at the time of acquisition having a credit rating of "A" or better from S&P or Moody's;

(c) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, a credit rating of A-2 or the equivalent thereof from S&P or P-2 or the equivalent thereof from Moody's;

(d) investments in certificates of deposit, banker's acceptances and time deposits maturing within 270 days 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 commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(e) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clauses (a), (b) and (d) above and entered into with a financial institution satisfying the criteria described in clause (d) above;

(f) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000; and

(g) in the case of any Foreign Subsidiary, (i) marketable direct obligations issued by, or unconditionally guaranteed by, the sovereign nation in which such Foreign Subsidiary is organized and is conducting business or issued by any agency of such sovereign nation and backed by the full faith and credit of such sovereign nation, in each case maturing within one year from the date of acquisition, so long as the indebtedness of such sovereign nation is rated at least A by S&P or A2 by Moody's or carries an equivalent rating from a comparable foreign rating agency or (ii) investments of the type and maturity described in clauses (b) through (f) above of foreign obligors, which investments or obligors have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies.

"Permitted Priority Liens" means all Liens permitted to have priority over the Liens in favor of the Administrative Agent, solely to the extent that such Liens are valid, perfected and non-avoidable as of the Filing Date (or as may be permitted to be perfected after the Filing Date pursuant to Section 546 of the Bankruptcy Code) and were not subordinated by agreement or applicable law, subject to the terms of the Financing Order and otherwise agreed to by the Administrative Agent.

"Permitted Variances" shall mean (i) all variances that are favorable to the financial condition and the interests of the Debtors and the other Loan Parties and the interests of the Administrative Agent or the Lenders, and (ii) any variance that is unfavorable to the financial condition and the interests of the Debtors and the other Loan Parties or the interests of the Administrative Agent or the Lenders and does not exceed, (x) with respect to disbursements (excluding fees, costs and expenses of professional advisors) 10%, tested every week on a cumulative basis for a rolling four week period (or, solely for each of the first three weeks of the Bankruptcy Cases, tested every week on a cumulative basis for the period from the Filing Date through such Testing Date) (y) with respect to both (a) accrued fees, costs and expenses of professional advisors and (b) the payment of fees, costs and expenses of professional advisors, 15%, tested every fourth week, on a cumulative basis for the rolling four week period, and (z) with respect to net cash flow (excluding fees, costs and expenses of professional advisors), 20%, tested every fourth week, on a cumulative basis for the rolling four week period, in each case, based upon the most recent Approved Budget, and as reflected in the Variance Report.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Effective Date" means the date in which all conditions precedent to the effectiveness of a Plan of Reorganization have been satisfied or waived in accordance with the Plan of Reorganization.

"Plan of Reorganization" means a plan of reorganization in form and substance satisfactory to the Administrative Agent in its sole discretion with respect to the economic and non-economic treatment of the Secured Obligations, the Existing Secured Obligations, the Administrative Agent, the Existing Administrative Agents, Lenders and Existing Lenders, (and, if such plan of reorganization does not provide for the indefeasible payment in full in cash of the Secured Obligations and Existing Secured Obligations on, or in connection with the occurrence of, the effective date under such plan of reorganization, also in form and substance satisfactory to each affected Lender in their sole discretion with respect to such economic treatment of the Secured Obligations and Existing Secured Obligations) and otherwise in form and substance satisfactory to the Administrative Agent in its sole discretion as to all other matters.

"Portugal Collateral" means any and all property owned, leased or operated by a Person covered by the Portugal Collateral Documents and credit rights and any and all other property or credit rights of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Secured Parties (as such term is defined in the Portugal Security Agreement), to secure any Secured Obligations (as such term is defined in the Portugal Security Agreement) on the terms and conditions, and as, set forth in the Portugal Security Agreement.

"Portugal Collateral Documents" means, collectively, the Portugal Security Agreement and any other notarial deeds or documents granting a Lien upon the Portugal Collateral as security for payment of the Secured Obligations on the terms and conditions, and as, set forth in the Portugal Security Agreement in each case as amended, restated, supplemented or otherwise modified from time to time.

"Portugal Guarantee" means any Portugal Loan Guarantor's corporate guarantee granted under the Portugal Security Agreement.

"Portugal Loan Guarantor" means the US Borrower's Subsidiary that is organized under the laws of Portugal and party to the Portugal Security Agreement.

"Portugal Security Agreement" means the Portugal Security Agreement to be entered into following the Effective Date pursuant to Section 5.23 between European Collateral Agent (acting as administrative agent for itself and on behalf of and for the benefit of the Secured Parties (as such term is defined in the Portugal Security Agreement) and Crisal – Cristalaria Automática, S.A. and the Netherlands Borrower and such other Loan Parties (if any) party thereto from time to time (as Security Providers (as such term is defined in the Portugal Security Agreement)), in form and substance satisfactory to the Administrative Agent, and given as security for the Secured Obligations (as such term is defined in the Portugal Security Agreement), as amended, restated, supplemented or otherwise modified from time to time.

"Pre-Petition Payment" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness, trade payables or other pre-petition claims against any Loan Party.

"Prepayment Event" means, without duplication:

(a) any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party, other than (i) dispositions described in Section 6.05(a), (j) or (k) and (ii) sales, transfers or other dispositions of Term Priority Collateral to the extent such proceeds are required pursuant to the terms of the Term Loan Agreement to permanently prepay Term Loan Obligations permitted hereunder and are in fact used to permanently prepay such Term Loan Obligations;

(b) [reserved]; or

(c) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Loan Party, other than insurance proceeds and condemnation awards with respect to Term Priority Collateral.

"Prepetition Adequate Protection Liens" has the meaning specified therefor in the Financing Order.

"Prime Rate" means 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 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 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.

"Principal Obligations" means the DIP Netherlands Principal Obligations as defined in Section 9.19, the DIP US Principal Obligations as defined in Section 9.20 and the Prepetition Principal Obligations as defined in Section 9.21.

"Process Agent" means Libbey Glass Inc. or such other Person acceptable to the Administrative Agent to act as agent for service of process for the purposes set forth in Section 9.09(d).

"Professional Fees and Net Cash Flow Testing Date" has the meaning assigned to such term in the definition of Testing Date.

"Projections" has the meaning assigned to such term in Section 5.01(f).

"Protective Advance" has the meaning assigned to such term in Section 2.04.

"QFC Credit Support" has the meaning assigned to such term in Section 9.28.

"Qualified ECP Guarantor" means, in respect of any CEA Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such CEA Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Qualified Investment Banker Engagement" means the engagement and retention by the Borrowers of an investment banker reasonably satisfactory to the Administrative Agent, which as of the Effective Date is Lazard, in each case, at Borrowers' sole cost and expense and, with respect to any investment banker engaged after the Effective Date, on terms and conditions reasonably satisfactory to the Administrative Agent, in each case, for purposes of preparing, marketing, and consummating potential strategic alternatives (including, without limitation, potential equity sales, refinancing transactions, capital investment raise transactions, and other transactions) as may be acceptable to the Borrowers and the Administrative Agent, the consummation of each of which shall be subject to the terms and provisions of this Agreement.

"Reaffirmation Agreement" means that certain Reaffirmation of Prepetition Loan Documents, dated as of the Effective Date, by and among the Loan Parties party thereto, the Administrative Agent and the Existing Administrative Agents.

"Recipient" means the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

"Register" has the meaning set forth in Section 9.04.

"Reinstated Existing Netherlands Secured Obligations" means any Reinstated Existing Secured Obligations in respect of Netherlands Obligations (as defined in the Existing Credit Agreement).

"Reinstated Existing Secured Obligations" means any Existing Secured Obligations constituting Avoided Payments, to the extent such obligations have been reinstated, in each case, pursuant to, and subject to the requirements and terms of the Bankruptcy Court.

"Reinstated Existing US Secured Obligations" means any Reinstated Existing Secured Obligations in respect of US Obligations (as defined in the Existing Credit Agreement).

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

"Relevant Governmental Body" means the Board and/or the NYFRB, or a committee officially endorsed or convened by the Board and/or the NYFRB or, in each case, any successor thereto.

"Report" means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Borrowers' assets from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

"Required Lenders" means, at any time, Lenders having Credit Exposure (USD Equivalent) and unused Revolving Commitments representing more than 50% of the sum of the total Credit Exposure (USD Equivalent) and unused Revolving Commitments at such time and based on the Exchange Rate in effect at such time.

"Requirement of Law" as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Reserves" means any and all reserves which the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including, without limitation, an availability reserve, reserves for accrued and unpaid interest on the Secured Obligations or the Existing Secured Obligations, Banking Services Reserves, reserves for rent at locations leased by any Loan Party and for consignee's, warehousemen's and bailee's charges, reserves for dilution of Accounts, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Obligations (other than the Terminated Swap Obligations), reserves for contingent liabilities of any Loan Party, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation, reserves in respect of the Carve Out and Specified Reserves and reserves for Taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party. For the avoidance of doubt, no Reserves shall be implemented in respect of the principal amount of the Terminated Swap Obligations.

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

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in any Loan Party or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the US Borrower or any option, warrant or other right to acquire any such Equity Interests in the US Borrower.

"Restriction Commencement Date" means a date on which a Restriction Trigger Event shall have occurred.

"Restriction Period" means the period commencing on a Restriction Commencement Date and at all times thereafter.

"Restriction Period Grid" means the table set forth below setting forth the applicable Restriction Trigger Amounts with respect to each provision of the Loan Documents wherein the term "Restriction Period" is used:

<u>Relevant Provision</u>	<u>Restriction Trigger Amount</u>
Article VII of the US Security Agreement	\$10,000,000
Provisions of the Netherlands Collateral Documents referring to "Netherlands Trigger Event"	\$10,000,000
Provisions of the Netherlands Collateral Documents referring to "Netherlands Bank Account Establishment Trigger Event"	Any amount determined by the Administrative Agent from time to time in its sole discretion

"Restriction Trigger Amount" means, with respect to each provision of the Loan Documents wherein the term "Restriction Period" is used, the amount set forth in the Restriction Period Grid opposite the reference to such provision.

"Restriction Trigger Event" means that (a) as of any date of determination the Aggregate Availability fails to be equal to or greater than the applicable Restriction Trigger Amount or (b) unless otherwise consented to by Administrative Agent in its sole discretion for the purposes of this definition, an Event of Default has occurred and is continuing.

"Revolving Commitment" means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender's Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment. The amount of each Lender's Commitment as of the Effective Date is set forth on the Commitment Schedule. The aggregate amount of the Lenders' Revolving Commitments as of the Effective Date is \$100,000,000.

"Revolving Exposure" means, with respect to any Lender as it relates to any Borrower at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans to such Borrower, in each case, and its LC Exposure with respect to any Letter of Credit requested by such Borrower and an amount equal to its Applicable Percentage of the aggregate principal amount of Swingline Loans to such Borrower, in each case, at such time.

"Revolving Lender" means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"Revolving Loan" means a Loan made pursuant to Section 2.01(b).

"Revolving Netherlands Exposure" means, with respect to any Lender as it relates to the Netherlands Borrower, at any time, the sum of the principal amount of such Lender's Netherlands Loans outstanding at such time made pursuant to the Revolving Netherlands Sublimit.

"Revolving Netherlands Sublimit" means, with respect to each Lender, the obligation, if any, of such Lender to make Revolving Loans hereunder to the Netherlands Borrower based on the Netherlands Borrowing Base, expressed as an amount representing the maximum possible aggregate amount of such Lender's Revolving Exposure hereunder, as such obligation may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Revolving Netherlands Sublimit is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Netherlands Sublimit. The initial aggregate amount of the Lenders' Revolving Netherlands Sublimit is \$20,000,000.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc.

"Sanctioned Country" means, at any time, a country or territory which in its entirety is the subject or target of any Sanctions.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State or by the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC, or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom or any other relevant sanctions authority.

"Secured Obligations" means, collectively, the US Secured Obligations and Netherlands Secured Obligations; provided, however, that the definition of "Secured Obligations" shall not create any guarantee by any Loan Party of (or grant of security interest by any Loan Party to support, as applicable) any Excluded Swap Obligations of such Loan Party for purposes of determining any obligations of any Loan Party.

"Settlement" has the meaning assigned to such term in Section 2.05(d).

"Settlement Date" has the meaning assigned to such term in Section 2.05(d).

"SOFR" with respect to any day means the secured overnight financing rate published for such day by the NYFRB, as the administrator of the benchmark (or a successor administrator), on the Federal Reserve Bank of New York's Website.

"SOFR-Based Rate" means SOFR, Compounded SOFR or Term SOFR.

"Solvent" mean, with respect to each Loan Party, at any time that (i) the fair value of the assets of such Loan Party, at a fair valuation, at such time exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of such Loan Party at such time are greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) such Loan Party at such time is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) such Loan Party at such time does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is then conducted and is proposed to be conducted thereafter.

"Specified Change in Control" means a "Change of Control" (or any other defined term having a similar purpose) as defined in the Term Loan Agreement.

"Specified Reserves" means, as of any date of determination, a reserve in an amount equal to the sum of any claims under § 503(b)(9) of the Bankruptcy Code based on the most recent good faith estimate of the amount of such claims provided by the Debtors and Consultant to the Administrative Agent (and excluding any such claims that have been paid as of such date of determination).

"Stated Maturity" means, with respect to any Indebtedness, the date specified in the agreement governing or certificate relating to such Indebtedness as the fixed date on which the final payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior the date originally scheduled for the repayment thereof.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D of the Board. Eurocurrency 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 of the Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which is contractually subordinated to payment of the Secured Obligations to the reasonable written satisfaction of the Administrative Agent; provided that the Term Loan Obligations shall not be deemed to be Subordinated Indebtedness for purposes hereof.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent.

"Subsidiary" means with respect to any Loan Party any direct or indirect subsidiary of such Loan Party.

"Supermajority Lenders" means, at any time, Lenders having Revolving Exposure and unused Revolving Commitments representing 66 2/3% or more of the sum of the total Revolving Exposure and unused Revolving Commitment.

"Superpriority Claim" has the meaning specified therefor in Section 3.16(b).

"Supported QFC" has the meaning assigned to such term in Section 9.28.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrowers or the Subsidiaries shall be a Swap Agreement.

"Swap Obligations" of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and wheresoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall be the sum of (a) its Applicable Percentage of the total Swingline Exposure at such time other than with respect to any Swingline Loans made by such Revolving Lender in its capacity as the Swingline Lender and (b) the principal amount of all Swingline Loans made by such Revolving Lender in its capacity as the Swingline Lender outstanding at such time (less the amount of participations funded by the other Lenders in such Swingline Loans).

"Swingline Lender" means JPMorgan Chase Bank, N.A. in its capacity as lender of Swingline Loans hereunder.

"Swingline Loan" means a Loan made pursuant to Section 2.05.

"Taxes" means any and all present or future taxes, assessments, social security contributions, levies, imposts, duties, deductions, withholdings (including backup withholdings), fees or other charges imposed by any Governmental Authority, including penalties, interest, additions to tax, surcharges, inflationary adjustments, fines, collection fees or any ancillary charges derived therefrom.

"Term Loan Agent" means Cortland Capital Market Services, LLC, as administrative agent and collateral agent for the lenders under the Term Loan Agreement.

"Term Loan Agreement" means that certain Superpriority Secured Debtor-in-Possession Credit Agreement dated as of the Effective Date by and among US Borrower, Holdings, the lenders from time to time party thereto, and Term Loan Agent.

"Term Loan Documents" means the **"Loan Documents"** (as defined in the Term Loan Agreement).

"Term Loan Obligations" means the **"Loan Obligations"** (as defined in the Term Loan Agreement) under the Term Loan Agreement and the Existing Term Loan Obligations.

"Term Loan Proceeds Account" means the **"Funding Account"** as defined in the Term Loan Agreement (as in effect on the date hereof).

"Term Priority Collateral" means the **"Term Priority Collateral"** (as defined in the Intercreditor Agreement).

"Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Terminated Swap Agreements" means those certain **"Swap Agreements"** (as such term is defined in the Existing Credit Agreement) listed on Schedule S-1 which were terminated on or prior to the Effective Date.

"Terminated Swap Obligations" means the **"Swap Obligations"** (as such term is defined under the Existing Credit Agreement) in an amount equal to the sum of the Terminated JPM Swap Obligations Amount plus \$11,479,808 arising under the Terminated Swap Agreements, of which the Terminated JPM Swap Obligations Amount is owing to JPMorgan Chase Bank, N.A. hereunder, and of which \$11,479,808 is owing to Fifth Third Bank, National Association hereunder.

"Terminated JPM Swap Obligations Amount" means an amount identified in writing (which may be by electronic email) by JPMorgan Chase Bank, N.A. to US Borrower following the Effective Date that is identified as a **"Terminated JPM Swap Obligations Amount Notice"** as constituting the Terminated Swap Obligations Amount owing to JPMorgan Chase Bank, N.A. in respect of the Terminated

"Testing Date" shall mean (x) with respect to the testing of Permitted Variances under clause (ii)(x) of the definition thereof, the last Business Day of (i) the first full calendar week after the Effective Date and (ii) every week thereafter (each such date under this clause (x), a **"Disbursements Testing Date"**) and (y) with respect to the testing of Permitted Variances under subclauses (y) and (z) of clause (ii) of the definition thereof, the last Business Day of (i) the fourth full calendar week after the Effective Date and (ii) every fourth week thereafter (each such date under this clause (y), a **"Professional Fees and Net Cash Flow Testing Date"**).

"Testing Period" means (a) in the case of any Disbursements Testing Date (as defined in the definition of Testing Date), the one week period ending on such Disbursements Testing Date, and (b) in the case of any Professional Fees and Net Cash Flow Testing Date (as defined in the definition of Testing Date), the four week period ending on such Professional Fees and Net Cash Flow Testing Date.

"Transactions" means (a) the commencement of the Bankruptcy Cases, (b) the execution, delivery and performance by the Loan Parties of this Agreement, (c) the borrowing of Loans and other credit extensions, (d) issuance of Letters of Credit hereunder, (e) the guarantees made hereunder or any other agreement by any Loan Guarantor, (f) the funding of the **"Loans"** (as defined in the Term Loan Agreement) in accordance with the terms of the Term Loan Agreement and this Agreement and (g) the payment of all fees, costs and expenses in connection with the foregoing to the extent set forth in the Approved Budget (subject to the variances and exclusions permitted hereunder).

"Type", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the CB Floating Rate or another rate of interest reasonably determined by the Administrative Agent, and whether such Loan or Borrowing is made in dollars or Euros.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment; provided that, if the Unadjusted Benchmark Replacement as so determined would be less than 1.00%, the Unadjusted Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement.

"United States" and **"U.S."** means the United States of America.

"Unliquidated Obligations" means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee or any indemnification obligation) that is contingent in nature at such time; or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations.

"US Borrower" means Libbey Glass Inc., a Delaware corporation.

"US Borrowing Base" means, at any time, the sum of (a) 85% of the Eligible Accounts at such time of all US Loan Parties other than Holdings, plus (b) the lesser of (i) 65% of such Loan Parties' Eligible Inventory, valued at the lower of cost or market value, determined on a first-in-first-out basis, at such time and (ii) the product of 85% multiplied by such US Loan Parties' Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent multiplied by such US Loan Parties' Eligible Inventory, valued at the lower of cost or market value, determined on a first-in-first-out basis, at such time, minus (c) Reserves without duplication of any Reserves with respect to the Netherlands Borrowing Base (including, but not limited to, the ERISA Reserve) related to such US Loan Parties. The maximum amount of the US Borrowing Base attributable to Inventory, together with Inventory attributable to the Netherlands Borrowing Base, is \$75,000,000. The Administrative Agent may, in its Permitted Discretion, reduce the advance rates set forth above, adjust Reserves or reduce one or more of the other elements used in computing the US Borrowing Base.

Notwithstanding the foregoing, if at any time (x) an Event of Default is in existence or (y) less than 65% of the aggregate gross dollar amount of the Accounts (other than Accounts owing to Affiliates) and Inventory set forth on the US Borrowing Base Certificate are Accounts and Inventory of the US Borrower (i.e., 35% or more of the aggregate gross dollar amount of the Accounts (other than Accounts owing to Affiliates) and Inventory set forth on the US Borrowing Base Certificate are Accounts and Inventory of US Loan Parties other than the US Borrower), then Administrative Agent may in its sole discretion require that the US Borrowing Base be converted from a "consolidated borrowing base" into "separate borrowing bases" whereby (subject only to such exceptions as Administrative Agent may agree in its sole discretion) each of the US Loan Parties would only receive access to US Loans (other than Protective Advances) to the extent the amount of the US Borrowing Base was then attributable to Eligible Accounts and Eligible Inventory of such US Loan Party. The Borrower Representative may designate in good faith certain Accounts and Inventory of US Loan Parties that are Subsidiaries of the US Borrower as being excluded from such calculation (and as a result thereof such Accounts and Inventory would not constitute Eligible Accounts or Eligible Inventory for all purposes in this Agreement and the other Loan Documents). Any such designation by the Borrower Representative would need to be included in the current US Borrowing Base Certificate.

"US Borrowing Base Certificate" means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit C or another form which is acceptable to the Administrative Agent in its sole discretion.

"US Collateral" means any and all property owned, leased or operated by a Person covered by the US Collateral Documents and any and all other property of any US Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders, to secure any Secured Obligations.

"US Collateral Documents" means, collectively, the US Security Agreement, the US Mortgages, the Grants of Security Interests in Intellectual Property, the Hong Kong Share Mortgage and any other documents granting a Lien upon the US Collateral as security for payment of the Secured Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"US General Availability" means, at any time, an amount equal to the difference of (a) the lesser of the total Revolving Commitments (less Reserves (other than Reserves which the Administrative Agent elects not to deduct for such purpose in its sole discretion)) and the US Borrowing Base at such time minus (b)(i) the total Revolving Exposure (excluding Revolving Netherlands Exposures) at such time, (ii) the principal amount of any Reinstated Existing US Secured Obligations and (iii) the principal amount of any Existing US Secured Obligations and Existing Netherlands Secured Obligations (excluding "Revolving Netherlands Exposure" (as defined in the Existing Credit Agreement) and obligations in respect of guaranties of such "Revolving Netherlands Exposure"; provided that such US General Availability will at no time exceed the difference of (x) the sum of the total Revolving Commitments (less Reserves (other than Reserves which the Administrative Agent elects not to deduct for such purpose in its sole discretion)) minus (y) the Aggregate Credit Exposure at such time and the "Aggregate Credit Exposure" (as defined in the Existing Credit Agreement). For the avoidance of doubt, the principal amount of Terminated Swap Obligations shall not be included in the calculation of US General Availability.

"US Loan Guarantors" means the US Borrower's domestic Subsidiaries and Holdings, and for the purposes of Article X hereof, shall also mean the US Borrower.

"US Loan Party" means the US Borrower, Holdings, the other US Loan Guarantors party hereto and the US Security Agreement.

"US Loans" means the loans and advances made or deemed made by the Lenders to the US Borrower pursuant to this Agreement, including Swingline Loans and Protective Advances. Notwithstanding anything to the contrary set forth herein, all US Loans shall be made in dollars.

"US Mortgage" means each Mortgage in respect of real property of a US Loan Party (it being agreed that each "US Mortgage" entered into in connection with the Existing Credit Agreement shall be a US Mortgage hereunder).

"US Obligations" means all obligations in respect of unpaid principal of and accrued and unpaid interest (including without limitation any post-petition interest, whether allowed or not) on the US Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations (not constituting or arising in respect of principal or interest or LC Disbursements) of any US Loan Party (or any other Loan Party other than a Netherlands Loan Party) to the Lenders or to any Lender, the Administrative Agent, the Issuing Bank or any indemnified party arising under any Loan Document.

"US Secured Obligations" means all US Obligations, together with all (i) the obligations of the US Loan Parties under the Loan Guaranty hereunder in respect of the Netherlands Secured Obligations and Existing Netherlands Secured Obligations, (ii) Banking Services Obligations of the US Borrower or any US Loan Guarantor and (iii) the Terminated Swap Obligations and Swap Obligations of the US Borrower or any US Loan Guarantor owing to one or more Lenders or their respective Affiliates; provided that (a) with respect to any transaction relating to such Banking Services Obligation or Swap Obligation entered into after the Effective Date, such Banking Services Obligation or Swap Obligation shall not constitute a US Secured Obligation entitled to the benefits of the Collateral Documents unless the Lender party thereto (other than Chase) shall have received the prior written consent of the Administrative Agent or (b) with respect to any transaction relating to such Banking Services Obligation or Swap Obligation entered into on or prior to the Effective Date (other than the Terminated Swap Obligations), the Lender party thereto (other than Chase) shall have delivered written notice to the Administrative Agent prior to the Effective Date that such transaction has been entered into and that it constitutes a US Secured Obligation entitled to the benefits of the Collateral Documents.

"US Security Agreement" means that certain Debtor-in-Possession Pledge and Security Agreement, dated as of the date of this Agreement, between the US Borrower, the US Loan Guarantors and the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, and any other pledge or security agreement entered into, after the date of this Agreement by any other US Loan Guarantor (as required by this Agreement or any other Loan Document), or any other Person, as the same may be amended, restated or otherwise modified from time to time.

"US Separate Borrowing Base Period" any period in which separate US Borrowing Bases are required by the last paragraph of the definition of US Borrowing Base.

"US Special Resolution Regime" has the meaning assigned to such term in Section 9.28.

"USD Equivalent" means, with respect to any amount of Euros, on any date, the amount of dollars that may be purchased with such amount of Euros at the Exchange Rate in effect on such date.

"Variance Report" has the meaning assigned to such term in Section 5.01(g).

"Weekly Cash Flow Forecast" has the meaning assigned to such term in Section 5.01(g).

"Weekly Collections Report" has the meaning assigned to such term in Section 5.01(i)(viii).

"Wholly-Owned Subsidiary" means with respect to any Person, any other Person all of the capital stock of which (other than directors' qualifying shares required by law) is owned by such Person directly and/or through other Wholly-Owned Subsidiaries of such Person.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a "Revolving Loan") or by Type (e.g., a "Eurocurrency Loan") or by Class and Type (e.g., a "Eurocurrency Revolving Loan"). Borrowings also may be classified and referred to by Class (e.g., a "Revolving Borrowing") or by Type (e.g., a "Eurocurrency Borrowing") or by Class and Type (e.g., a "Eurocurrency Revolving Borrowing").

Section 1.03 Terms of Usage.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document or contractual obligation herein shall, unless otherwise specified, be construed as referring to such agreement, instrument or other document or contractual obligation as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or any other Loan Document), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted 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 and (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. Unless otherwise provided, dollar (\$) baskets set forth in the representations and warranties, covenants and events of default provisions of this Agreement (and other similar baskets; it being understood that this sentence does not apply to Article II of this Agreement) are calculated as of each date of measurement by the USD Equivalents thereof as of such date of measurement; provided that if any such baskets are exceeded solely as a result of fluctuations in applicable currency exchange rates after the last time such baskets were accessed, such baskets will not be deemed to have been exceeded solely as a result of such fluctuations in currency exchange rates.

(b) In this Agreement, where it relates to a Netherlands entity, reference to (i) a winding-up, administration or dissolution includes any insolvency proceedings within the meaning of Regulation (EU) No 2015/848 of the European Parliament and of the Council of the European Union of 20 May 2015 on insolvency proceedings (recast) listed or to be listed in Annex A thereto or a Netherlands entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*); (ii) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*; (iii) any step or procedure taken in connection with insolvency proceedings includes a Netherlands entity having filed a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*) or Section 60 of the Social Insurance Financing Act of the Netherlands (*Wet Financiering Sociale Verzekeringen*) in conjunction with Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*), other than an automatic notice as a result of the first extraordinary three-month payment extension requested by any Netherlands Loan Party in accordance with the decree of the Dutch State Secretary of Finance of 22 April 2020 (nr. 2020-8499) and any further extension requested by any Loan Party in accordance with the updated decree of the Dutch State Secretary of Finance of 6 May 2020, nr. 2020-9594 or any further update of such decree, provided, that, such request for additional extension has been agreed to by the Administrative Agent in writing in advance; (iv) a trustee in bankruptcy includes a *curator* or a *beoogd curator*; (v) an administrator includes a *bewindvoerder* or a *beoogd bewindvoerder*; (vi) an attachment includes a *conservatoir beslag* or *executorial beslag*; (vii) duly authorized by all necessary organizational and, if required, stockholder (or equity holder, as applicable) action includes any action required to comply with the Works Councils Act of the Netherlands (*Wet op de ondernemingsraden*) and (viii) any Lien shall, with due observance of Section 5.22(c), not include any joint and several liability as a result of any Netherlands Fiscal Unity.

(c) Any reference herein or in any other Loan Document or the Existing Loan Documents to the satisfaction, repayment or payment in full of the Secured Obligations shall mean (a) the payment or repayment in full in immediately available funds in the applicable currency of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans and "Loans" (as defined in the Existing Credit Agreement) and the Terminated Swap Obligations, together with the payment of any premium applicable to the repayment of the Loans and "Loans" (as defined in the Existing Credit Agreement), (ii) all costs and expenses of the Administrative Agent, the Existing Administrative Agents, the Lenders, the Existing Lenders or any of their affiliates under this Agreement and the Existing Credit Agreement that have accrued and are unpaid regardless of whether demand has been made therefor, including, without limitation with respect to any Banking Services Obligations or Swap Obligations, (iii) all fees or charges that have accrued hereunder or under any other Loan Document or Existing Loan Document and are unpaid, (b) in the case of contingent reimbursement obligations with respect to Letters of Credit or Existing Letters of Credit, providing cash collateral in the applicable currency equal to 105% of the LC Exposure as of the applicable date plus accrued and unpaid interest thereon, (c) in the case of obligations with respect to Banking Services (other than Swap Obligations) and "Banking Services" (other than "Swap Obligations") (each as defined in the Existing Credit Agreement), providing cash collateral in an amount determined by the Administrative Agent or the Existing Administrative Agents, as applicable, as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Banking Services (other than Swap Obligations) and "Banking Services" (other than "Swap Obligations") (each as defined in the Existing Credit Agreement), (d) the receipt by the Administrative Agent or the Existing Administrative Agents of cash collateral in the applicable currency in order to secure any other contingent Secured Obligations or Existing Secured Obligations for which a claim or demand for payment has been made on or prior to such time or that the Administrative Agent or the Existing Administrative Agents, as applicable, reasonably expects will be made or in respect of matters or circumstances known to the Administrative Agent, a Lender, the Existing Administrative Agents or an Existing Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as the Administrative Agent or the Existing Administrative Agents, as applicable, reasonably determines is appropriate to secure such contingent Secured Obligations or the Existing Secured Obligations, (e) the payment or repayment in full in immediately available funds in the applicable currency of all other outstanding Secured Obligations and Existing Secured Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Secured Obligations or Existing Secured Obligations) under Swap Agreements and "Swap Agreements" (as defined in the Existing Credit Agreement), other than in each case of clauses (a) to (e) hereof, (i) contingent indemnification obligations to the extent no demand or claim has been made with respect thereto and no claim giving rise thereto has been asserted, (ii) any Banking Services (other than Swap Obligations) and any Existing Banking Services Obligations (other than Swap Obligations (as such term is defined in the Existing Credit Agreement)) that, at such time, are allowed by the applicable Lender or Existing Lender to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Swap Obligations that, at such time, are allowed by the applicable Lender to remain outstanding without being required to be repaid, (f) the termination of all of the Commitments of the Lenders and (g) with respect to the Secured Obligations and the Existing Secured Obligations, the delivery of a payoff letter (in form and substance satisfactory to the Administrative Agent and the Existing Administrative Agents, as applicable) and delivery of a general release (in form and substance satisfactory to the Administrative Agents and the Existing Administrative, as applicable) of any and all claims and causes of action that could have been asserted or raised under or in connection with the Loan Documents and the Existing Loan Documents.

Section 1.04 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 the Borrower Representative notifies the Administrative Agent that the Borrowers request 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 the Borrower Representative 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. Notwithstanding anything to the contrary herein, all obligations (regardless of whether in existence as of the Effective Date or entered into after that date) that are or would (if they were in existence as of the Effective Date) be treated as operating leases under the methods of accounting implemented by Holdings and its Subsidiaries in accordance with GAAP as of the Effective Date shall, for purposes of determining compliance with any covenant contained herein or otherwise making any financial calculations contemplated herein, be treated from and after the Effective Date in the same manner, regardless of any change to the accounting for leases required under FASB Accounting Standards Update No. 2016-02 dated February 2016 regarding Leases (Topic 842). For the avoidance of doubt, any lease liability recorded on the consolidated balance sheet of Holdings and its Subsidiaries after December 31, 2018 with respect to any obligation treated as an operating lease under the previous sentence shall, consistent with current accounting treatment regarding operating leases, be disregarded for purposes of determining compliance with any covenant contained herein or otherwise making any financial calculations contemplated herein.

Section 1.05 Interest Rates; LIBOR Notifications. The interest rate on Eurocurrency Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administration, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurocurrency Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event or an Early Opt-In Election, Section 2.14(c) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.14(e), of any change to the reference rate upon which the interest rate on Eurocurrency Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBO Rate" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.14(c), whether upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.14(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

ARTICLE II

The Credits

Section 2.01 Commitments.

(a) [Reserved].

(b) (A) Subject to the terms and conditions set forth herein, each Lender agrees to make Revolving Loans to each Borrower from time to time during the Availability Period in dollars, with respect to US Borrower and Netherlands Borrower, or Euros, with respect to Netherlands Borrower, as requested by such Borrower, in an aggregate principal amount that will not result in (i) the USD Equivalent of such Lender's Revolving Exposure, *plus* the aggregate principal amount of any Reinstated Existing Secured Obligations of such Lender, *plus* the aggregate principal amount of any Existing Secured Obligations of such Lender, in each case, with respect to the Borrowers, collectively exceeding such Lender's Revolving Commitment, (ii) the USD Equivalent of the Aggregate Credit Exposures, *plus* the aggregate principal amount of any Reinstated Existing Secured Obligations, *plus* the aggregate principal amount of any Existing Secured Obligations, in each case, with respect to the Borrowers, collectively exceeding the sum of the total Revolving Commitments (less Reserves (other than Reserves which the Administrative Agent elects not to deduct for such purpose in its sole discretion)), (iii) the USD Equivalent of the total Revolving Exposures (excluding Revolving Netherlands Exposures), *plus* the aggregate principal amount of any Reinstated Existing US Secured Obligations with respect to "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, with respect to the Borrowers, collectively exceeding the US Borrowing Base, (iv) the USD Equivalent of such Lender's Revolving Netherlands Exposure, *plus* the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) of such Lender, *plus* the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) of such Lender under the Existing Credit Agreement, in each case, with respect to the Netherlands Borrower, collectively exceeding such Lender's Revolving Netherlands Sublimit, (v) the USD Equivalent of the total Revolving Netherlands Exposures, *plus* the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, with respect to the Netherlands Borrower, collectively exceeding the sum of the total Revolving Netherlands Sublimit, (vi) the USD Equivalent of the total Revolving Netherlands Exposures, *plus* the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, collectively exceeding the Netherlands Borrowing Base or (vii) the USD Equivalent of the total Revolving Exposures relating to the Netherlands Borrower, *plus* any Reinstated Existing Netherlands Secured Obligations, *plus* the total "Revolving Exposure" (as such term is defined in the Existing Credit Agreement) with respect to the Netherlands Borrower under the Existing Credit Agreement, collectively exceeding the Libbey Europe Sublimit, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances pursuant to the terms of Section 2.04. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans. Subject to Section 2.14, each Borrowing made in Euros shall be comprised entirely of Eurocurrency Loans.

(A) (B) Not later than noon, Local Time, on the second Business Day preceding the Borrowing Date with respect to each Borrowing (or, in the case of a CBFR Borrowing at a time when Eurocurrency Loans made in Euros shall be outstanding, promptly on such Borrowing Date), the Administrative Agent shall determine the Exchange Rate with respect to Euros as of such date and give notice thereof to the Netherlands Borrower and the relevant Lenders. The Exchange Rate so determined shall become effective on such Borrowing Date for the purposes of determining availability under the Commitments with respect to such Borrowing (it being understood that such availability shall be calculated and determined by applying such Exchange Rate to the aggregate principal amount of Loans made in Euros which are outstanding on such Borrowing Date).

(c) Not later than 2:00 p.m., New York City time, on each Calculation Date pursuant to clause (a) of such definition (so long as any Eurocurrency Loans made in Euros shall be outstanding), the Netherlands Borrower shall determine the Exchange Rate with respect to Euros as of such Calculation Date and give notice thereof to the Administrative Agent and the relevant Lenders. The Exchange Rate so determined shall become effective on the Calculation Date, unless the Administrative Agent shall have delivered a notice to Netherlands Borrower of a different Exchange Rate in which case the Exchange Rate as determined by the Administrative Agent shall control. On any Calculation Date pursuant to clause (b) of such definition, the Administrative Agent shall determine the Exchange Rate with respect to Euros as of such Calculation Date and give notice thereof to the Netherlands Borrower and such Exchange Rate shall become effective on such Calculation Date. If, on any Calculation Date, (i) the USD Equivalent of the total Revolving Netherlands Exposures, *plus* the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, relating to the Netherlands Borrower, collectively exceeds the sum of the total Revolving Netherlands Sublimit, (ii) the USD Equivalent of the total Revolving Exposures (excluding Revolving Netherlands Exposure), *plus* the aggregate principal amount of any Reinstated Existing US Secured Obligations with respect to "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, with respect to the Borrowers, collectively exceeds the US Borrowing Base, (iii) the USD Equivalent of the total Revolving Netherlands Exposure, *plus* the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case relating to the Netherlands Borrower, collectively exceeds the Netherlands Borrowing Base or (iv) the USD Equivalent of the total Revolving Exposures, *plus* any Reinstated Existing Netherlands Secured Obligations, *plus* the total "Revolving Exposure" (as such term is defined in the Existing Credit Agreement) with respect to the Netherlands Borrower under the Existing Credit Agreement, collectively exceeds the Libbey Europe Sublimit, then each such Borrower shall, within three (3) Business Days after notice thereof from the Administrative Agent, prepay its Revolving Loans in an aggregate USD Equivalent amount equal, when taken together with any contemporaneous prepayment by the other Borrower, to any such excess (such calculation to be made using the Exchange Rate that is effective on such Calculation Date); provided that any such prepayment shall be accompanied by accrued interest to the extent required by Section 2.13 but shall be without premium or penalty of any kind (other than any payments required under Section 2.16).

Section 2.02 Loans and Borrowings.

(a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. Any Protective Advance and any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.04 and 2.05.

(b) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of CBFR Loans or Eurocurrency Loans as the Borrower Representative may request in accordance herewith, provided that all Eurocurrency Borrowings made on the Effective Date must be made in accordance with Section 2.03. Each Swingline Loan to the US Borrower shall be a CBFR Loan and each Swingline Loan to the Netherlands Borrower shall bear interest at the Overnight LIBO Rate *plus* the Applicable Rate for Eurocurrency Loans. Each Lender at its option may make any Eurocurrency Loan or any other Loan hereunder by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the applicable Borrowers to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurocurrency Borrowing, such Borrowing shall be in an aggregate (USD Equivalent) amount that is an integral multiple of \$500,000 and not less than \$2,000,000. At the time that each CBFR Borrowing is made, such Borrowing shall be in an aggregate (USD Equivalent) amount that is an integral multiple of \$500,000 and not less than \$1,000,000; provided that a CBFR Borrowing may be in an aggregate (USD Equivalent) amount that is equal to the entire unused balance of the total Revolving Commitments (less Reserves (other than Reserves which Administrative Agent elects not to deduct for such purpose in its sole discretion)) or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of seven (7) Eurocurrency Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower Representative shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(e) Notwithstanding anything to the contrary in this Agreement, a request for Borrowings for the account of the US Borrower in respect of the Existing US Secured Obligations (excluding guaranties of Existing Netherlands Secured Obligations) will be deemed to have been submitted for Borrowings within one (1) Business Day of entry of the Final Financing Order in an amount equal to the Existing US Secured Obligations on such date (excluding the guaranties of Existing Netherlands Secured Obligations). The proceeds of the Borrowings referenced in the immediately preceding sentence will be applied (it being understood that such application shall be settled as a cashless transaction by virtue of book entries on Administrative Agent's loan systems reflecting the reduction of the Existing US Secured Obligations and an increase to the Revolving Loans made to the US Borrower hereunder, that such Borrowings shall not be subject to the limitations set forth in Section 2.01(b)(A) or the applicable conditions precedent set forth in Article IV hereof) to repay the Existing US Secured Obligations (excluding guaranties of Existing Netherlands Secured Obligations under the Existing Credit Agreement). For the avoidance of doubt, all Existing Netherlands Secured Obligations under the Existing Credit Agreement will remain outstanding under the Existing Credit Agreement and subject to the terms of the Existing Credit Agreement and this Credit Agreement.

Section 2.03 Requests for Borrowings. To request a Borrowing, the Borrower Representative shall notify the Administrative Agent of such request by submitting a Borrowing Notice (delivered by hand or facsimile) signed by the Borrower Representative (a) in the case of a Eurocurrency Borrowing, not later than noon, Local Time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of a CBFR Borrowing, not later than noon, Local Time, on the date of the proposed Borrowing; provided that, with respect to any Eurocurrency Borrowing proposed to be made on the Effective Date, the Administrative Agent shall not later than noon, Local Time, three (3) Business Days prior to the Effective Date have received a Borrowing Notice and a funding indemnity side letter by each Borrower requesting such Borrowing for the benefit of the Administrative Agent and each Lender reasonably satisfactory to the Administrative Agent, and in case such notice and side letter are not so received by such time, the Borrower shall be deemed to have requested the USD Equivalent of CBFR Loans denominated in dollars in lieu of such Eurocurrency Loans; and provided, further, that any such notice of a CBFR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago time, on the date of the proposed Borrowing. Each such telephonic Borrowing Notice shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Borrowing Notice signed by the Borrower Representative. Each such telephonic and written Borrowing Notice shall specify the following information in compliance with Section 2.01:

- (i) the name of the applicable Borrower;
- (ii) the aggregate amount of the requested Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) with respect to Netherlands Loans, whether such Borrowing is to be made in dollars or Euros;
- (v) whether such Borrowing is to be made pursuant to the Revolving Netherlands Sublimit; and

(vi) whether such Borrowing is to be a CBFR Borrowing or a Eurocurrency Borrowing; and

(vii) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Borrowing is specified in such Borrowing Notice, then the requested Borrowing shall be, in the case of a Borrowing requested to be made in dollars, a CBFR Borrowing and, in the case of a Borrowing requested to be made in Euros, a Eurocurrency Borrowing with an Interest Period of one month. If no Interest Period is specified with respect to any requested Eurocurrency Revolving Borrowing, then the applicable Borrower(s) shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Notice in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Protective Advances.

(a) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Loans to the Borrowers in dollars or Euros, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Secured Obligations, or (iii) to pay any other amount chargeable to or required to be paid by any Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that, the aggregate USD Equivalent (measured at the time of each Protective Advance) amount of Protective Advances outstanding at any time shall not at any time exceed \$10,000,000; provided further that, the USD Equivalent amount of Aggregate Credit Exposure plus the "Aggregate Credit Exposure" (as such term is defined in the Existing Credit Agreement) shall not exceed the sum of the total Revolving Commitments; provided further that, the USD Equivalent of any Lender's Revolving Exposure plus such Lender's "Revolving Exposure" (as such term is defined in the Existing Credit Agreement) shall not exceed such Lender's Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. Protective Advances with respect to the US Borrower shall be secured by liens in favor of the Administrative Agent for the benefit of itself, the Issuing Bank and the Lenders on and to the US Collateral and shall constitute Obligations of the US Borrower. Protective Advances with respect to the Netherlands Borrower shall be secured by the Liens in favor of the Administrative Agent for the benefit of itself, the Issuing Bank and the Lenders in and to the Collateral and shall constitute Obligations of the Netherlands Borrower hereunder. All Protective Advances shall be, in the case of a Borrowing made in dollars, CBFR Borrowings and, in the case of a Borrowing made in Euros, bear interest at an interest rate reasonably determined by the Administrative Agent to compensate the applicable Lenders for such Borrowing in Euros for the applicable period. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability with respect to the Borrower on whose behalf a Protective Advance was made and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to such Borrower (including, with respect to the Netherlands Borrower, pursuant to the Revolving Netherlands Sublimit) to repay such Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

Section 2.05 Swingline Loans

(a) Subject to the terms and conditions set forth herein, the Swingline Lender may, but shall have no obligation to, make Swingline Loans to the Borrowers, from time to time during the Availability Period, in dollars with respect to US Borrower and Netherlands Borrower, or in Euros to the Netherlands Borrower, in an aggregate principal amount at any time outstanding that will not result in (provided that, solely with respect to the Swingline Lender and not with respect to any Borrower, the following limits shall not be deemed to have been exceeded if the only reason that the limits are exceeded is as a result of currency exchange rate changes occurring after the date that the Swingline Loan was made) (i) the aggregate principal amount of outstanding Swingline Loans exceeding the USD Equivalent of \$10,000,000, (ii) the USD Equivalent of the Aggregate Credit Exposures and the "Aggregate Credit Exposures" (as defined in the Existing Credit Agreement) with respect to the Borrowers exceeding the sum of the total Revolving Commitments (less Reserves (other than Reserves which Administrative Agent elects not to deduct for such purpose in its sole discretion)), (iii) the USD Equivalent of the total Revolving Exposures with respect to the US Borrower and the "Revolving Exposure" (as defined in the Existing Credit Agreement) exceeding the US Borrowing Base or (iv) the USD Equivalent of the total Revolving Netherlands Exposure with respect to the Netherlands Borrower and the "Revolving Netherlands Exposure" (as defined in the Existing Credit Agreement) exceeding the Netherlands Borrowing Base; provided that (x) the Netherlands Borrower shall not be permitted to borrow more than the USD Equivalent of \$5,000,000 in Swingline Loans and (y) the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Subject to Section 2.14, each Swingline Borrowing made in Euros shall be comprised entirely of Swingline Loans bearing interest at the Overnight LIBO Rate plus the Applicable Rate for Eurocurrency Loans plus 1%. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Swingline Loans. To request a Swingline Loan, the Borrower Representative shall notify the Administrative Agent of such request by telephone (confirmed by facsimile), in the case of Swingline Loans denominated in dollars, not later than noon, Chicago time, or in the case of Swingline Loans denominated in Euros, no later than 11:00 a.m., London time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower Representative. The Swingline Lender shall make each Swingline Loan available to the Borrowers by means of a credit to the applicable Funding Account(s) (provided that such credit shall instead be, in the case at the time of such Borrowing full cash dominion is in effect pursuant to Article VII of the US Security Agreement or as a Netherlands Trigger Event, to the Collection Account or the Netherlands Collection Account, as applicable) as early as possible on the requested date of such Swingline Loan.

(b) The Swingline Lender may (i) on same Business Day written notice given to the Administrative Agent not later than 11:00 a.m., Chicago time, in the case of Swingline Loans denominated in dollars, or (ii) on three (3) Business Days written notice given to the Administrative Agent not later than 11:00 a.m., London time, in the case of Swingline Loans denominated in Euros, require the Revolving Lenders to acquire participations in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate dollar and/or Euro amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower Representative of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the US Borrower (or other party on behalf of such Borrower) in respect of a Swingline Loan made in dollars after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the US Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the US Borrower of any default in the payment thereof. Any amounts received by the Swingline Lender from the Netherlands Borrower (or other party on behalf of such Borrower) in respect of a Swingline Loan made in Euros after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Netherlands Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Netherlands Borrower of any default in the payment thereof. Notwithstanding the foregoing, a Lender shall not have any obligation to acquire a participation in a Swingline Loan pursuant to this paragraph if an Event of Default shall have occurred and be continuing at the time such Swingline Loan was made and such Lender shall have notified the Swingline Lender in writing, at least one (1) Business Day prior to the time such Swingline Loan was made, that such Event of Default has occurred and is continuing and that such Lender will not acquire participations in Swingline Loans made while such Event of Default is continuing.

(c) Upon the making of a Swingline Loan (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan), each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender without recourse or warranty, an undivided interest and participation in such Swingline Loan in proportion to its Applicable Percentage of the Revolving Commitment. The Swingline Lender may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Loan.

(d) The Administrative Agent, on behalf of the Swingline Lender, shall request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago time, in the case of Swingline Loans denominated in dollars, or 12:00 p.m., London time, in the case of Swingline Loans denominated in Euros, on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) shall transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago time, in the case of Swingline Loans denominated in dollars, or 2:00 p.m., London time, in the case of Swingline Loans denominated in Euros, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amounts of the Swingline Lender's Swingline Loans with respect to the applicable Borrower and, together with Swingline Lender's Applicable Percentage of such Swingline Loan, shall constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon as specified in Section 2.07.

Section 2.06 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower Representative may request the issuance of Letters of Credit for the account of US Borrower (for the benefit of US Borrower or any other US Loan Party), in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the US Borrower to, or entered into by the US Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Issuing Bank shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Issuing Bank in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed not to be in effect on the Effective Date for purposes of clause (ii) above, regardless of the date enacted, adopted, issued or implemented.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower Representative shall hand deliver or facsimile (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (prior to noon, Chicago time, at least three (3) Business Days prior to the requested date of issuance, amendment, renewal or extension or such shorter period as the Issuing Bank may agree) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Issuing Bank, US Borrower also shall submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit US Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed \$15,000,000, (ii) the USD Equivalent of the Aggregate Credit Exposures, *plus* the aggregate principal amount of any Reinstated Existing Secured Obligations, *plus* the aggregate principal amount of any Existing Secured Obligations, in each case, with respect to the Borrowers, collectively shall not exceed the sum of the total Revolving Commitments (less Reserves (other than Reserves which Administrative Agent elects not to deduct for such purpose in its sole discretion)) and (iii) the USD Equivalent of the total Revolving Exposures (excluding Revolving Netherlands Exposures) *plus* the aggregate principal amount of any Reinstated Existing US Secured Obligations with respect to "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, with respect to the Borrowers, collectively shall not exceed the US Borrowing Base.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit and (ii) the date that is five (5) Business Days prior to the Maturity Date; provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (ii) above).

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Revolving Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the US Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the US Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or increase, reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) **Reimbursement.** If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the US Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than noon, Chicago time, on the date that such LC Disbursement is made, if the US Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., Chicago time, on such date, or, if such notice has not been received by the US Borrower prior to such time on such date, then not later than noon, Chicago time, on (i) the Business Day that the US Borrower receives such notice, if such notice is received prior to 9:00 a.m., Chicago time, on the day of receipt, or (ii) the Business Day immediately following the day that the US Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, the US Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 that such payment be financed with a CBFR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the US Borrower's obligation to make such payment shall be discharged and replaced by the resulting CBFR Revolving Borrowing. If the US Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the US Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the US Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the US Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans or Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the US Borrower of its obligation to reimburse such LC Disbursement.

(f) **Obligations Absolute.** The US Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the US Borrower's obligations hereunder. Neither the Administrative Agent, the Revolving Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the US Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the US Borrower to the extent permitted by applicable law) suffered by the US Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the applicable Borrower by telephone (confirmed by facsimile) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the US Borrower of its obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank shall make any LC Disbursement, then, unless the US Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the US Borrower reimburses such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans; provided that, if the US Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of the Issuing Bank. The Issuing Bank may be replaced at any time by written agreement among the US Borrower, the Administrative Agent and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the US Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the US Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the US Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or (i) of Article VII. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account and the US Borrower hereby grants the Administrative Agent a security interest in the LC Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the US Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the US Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Secured Obligations. If the US Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the US Borrower within three (3) Business Days after all such Defaults have been cured or waived.

(k) Existing Letters of Credit. Schedule 2.06 hereto contains a list of all Letters of Credit (as defined in the Existing Credit Agreement) outstanding on the Filing Date pursuant to the Existing Credit Agreement. For the period from and after the effective date of the Interim Financing Order, each such Letter of Credit set forth on Schedule 2.06, including any extension or renewal thereof, that remains outstanding on the effective date of the Interim Financing Order (each, as amended from time to time in accordance with the terms thereof and hereof, an "Existing Letter of Credit") shall be deemed Letters of Credit re-issued hereunder for the account of US Borrower, for all purposes of this Agreement and the other Loan Documents, including, without limitation, calculations of US General Availability, the US Borrowing Base, Revolving Exposure, LC Exposure and all other fees and expenses relating to the Letters of Credit (including any related indemnification obligations). Issuing Bank hereby assumes and agrees to perform any and all duties, obligations and liabilities to be performed or discharged by the issuers of the Existing Letters of Credit. US Borrower agrees to execute and deliver such documentation, if any, requested by the Administrative Agent, or Issuing Bank to evidence, record, or further the foregoing deemed re-issuance.

Section 2.07 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; provided that Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the applicable Borrower by promptly crediting the amounts so received, in like funds, to the Funding Account(s); provided that (A) Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank and (ii) a Protective Advance shall be retained by the Administrative Agent, and (B) in the case at the time of such Borrowing full cash dominion is in effect pursuant to Article VII of the US Security Agreement or as a result of a Netherlands Trigger Event, all Loans to the US Borrower or the Netherlands Borrower shall be credited to the Collection Account or the Netherlands Collection Account, respectively.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower requesting such Borrowing severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case such Borrower, with respect to a Borrowing made in dollars, the interest rate applicable to CBFR Loans and, with respect to a Borrowing made in Euros, at an interest rate applicable to Eurocurrency Borrowings having an Interest Period of one month. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

Section 2.08 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Notice in accordance with the terms hereof and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Notice. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section; provided that, subject to Section 2.14, Borrowings made in Euros may not be converted to a different Type. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings or Protective Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower Representative shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Notice would be required under Section 2.03 if the Borrowers were requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower Representative.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

- (ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;
- (iii) whether the resulting Borrowing is to be a CBFR Borrowing or a Eurocurrency Borrowing; and
- (iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

- (d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

- (e) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall, in the case of a Borrowing made in dollars, be converted to a CBFR Borrowing and, in the case of a Borrowing made in Euros, converted to a Eurocurrency Borrowing with an Interest Period of one month. Notwithstanding any contrary provision hereof, if a Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as a Default is continuing (i) no outstanding Borrowing made in dollars may be converted to or continued as a Eurocurrency Borrowing and (ii) unless repaid, each Eurocurrency Borrowing shall, in the case of a Borrowing made in dollars, be converted to a CBFR Borrowing and, in the case of a Borrowing made in Euros, continued with an Interest Period of one month, in each case, at the end of the Interest Period applicable thereto.

Section 2.09 Reduction or Termination of Commitments.

- (a) Unless previously terminated, all Commitments shall terminate on the Maturity Date.
- (b) The Borrowers shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent, from time to time, to reduce the amount of the Commitments; provided that no such reduction of Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Loans made on the effective date thereof, the Availability with respect to either Borrower would be less than zero. Any such reduction shall be in an amount equal to \$1,000,000, or a whole multiple thereof, and shall reduce permanently the Commitments then in effect. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments; provided that with the prior consent of each of the Administrative Agent and the Required Lenders reductions may be made to the Commitments of Defaulting Lenders without having to reduce the Commitments of the other Lenders.

(c) The Borrowers may at any time terminate the Commitments upon (i) the payment in full of all outstanding Obligations, together with accrued and unpaid interest thereon and on any Letters of Credit, (ii) the cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit (or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent) equal to 105% of the LC Exposure as of such date), (iii) the payment in full of the accrued and unpaid fees and (iv) the payment in full of all outstanding reimbursable expenses and other Obligations together with accrued and unpaid interest thereon.

(d) The Borrower Representative shall notify the Administrative Agent of any election to terminate the Commitments under paragraph (c) of this Section at least three (3) Business Days prior to the effective date of such termination or such shorter period as may be agreed by the Administrative Agent, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination of the Commitments shall be permanent.

Section 2.10 Repayment and Amortization of Loans; Evidence of Debt.

(a) (i) Each Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan made to such Borrower on the Maturity Date, (ii) the US Borrower unconditionally promises to pay to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent, (iii) the US Borrower hereby unconditionally promises to pay to the Swingline Lender the then unpaid principal amount of each Swingline Loan in dollars on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least four (4) Business Days after such Swingline Loan is made, (iv) the Netherlands Borrower unconditionally promises to pay to the Administrative Agent the then unpaid amount of each Protective Advance made on behalf of the Netherlands Borrower on the earlier of the Maturity Date and demand by the Administrative Agent and (v) the Netherlands Borrower hereby unconditionally promises to pay the Swingline Lender the then unpaid principal amount of each Swingline Loan in Euros on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least four (4) Business Days after such Swingline Loan is made.

(b) At all times that full cash dominion is in effect pursuant to Article VII of the US Security Agreement or as a result of a Netherlands Trigger Event, on each Business Day, the Administrative Agent shall apply all immediately available funds credited to the Collection Account or the Netherlands Collection Account, as applicable, in respect of each applicable Borrower the previous Business Day first with respect to the US Borrower (and the Netherlands Borrower with respect to Protective Advances made on behalf of the Netherlands Borrower) to prepay any Protective Advances that may be outstanding, second to prepay the Revolving Loans (including Swingline Loans) made to such Borrower and third to cash collateralize outstanding LC Exposure in respect of such Borrower. Notwithstanding anything to the contrary contained herein, after the Effective Date at any time when cash dominion is not in effect pursuant to Article VII of the US Security Agreement, and until such time as all of the outstanding principal balance of Existing US Secured Obligations (excluding any guaranties of Existing Netherlands Secured Obligations) has been paid down to zero either pursuant to Section 2.02(e) or pursuant to the operation of this Section 2.10(b), all collections received by US Borrower in the Collection Account or otherwise received by US Borrower with respect to proceeds of Accounts, Inventory or other ABL Priority Collateral that are not otherwise applied as a prepayment of the Existing US Secured Obligations shall be deemed (it being understood that the following shall be settled as a cashless transaction by virtue of book entries on the Administrative Agent's loan systems reflecting the reduction of the Existing US Secured Obligations and an increase to the Revolving Loans made to the US Borrower hereunder, that such Borrowings shall not be subject to the limitations set forth in Section 2.01(b)(A) or the applicable conditions precedent set forth in Article IV hereof), to be a concurrent request for and funding of Revolving Loans to the US Borrower hereunder and used to repay in full the Existing US Secured Obligations (other than the guaranties of the Existing Netherlands Secured Obligations). Notwithstanding the foregoing, unless otherwise determined by the Administrative Agent in its sole discretion, the Administrative Agent may defer such repayment of the Existing US Secured Obligations and advance of Revolving Loans made to the US Borrower hereunder described in the preceding sentence until the Administrative Agent's receipt of the Weekly Collections Report for the preceding week (and upon Administrative Agent's receipt of such Weekly Collections Report, the Administrative Agent is authorized upon such date to apply such deemed repayment of Existing US Secured Obligations and advance of Revolving Loans to the US Borrower hereunder as set forth in the Weekly Collections Report); provided that, in the event of a discrepancy between the Administrative Agent's records and the Weekly Collections Report, the Administrative Agent's record shall be presumed to be accurate absent manifest error identified by Borrower Representative to the Administrative Agent in writing within five (5) Business Days' of Borrower Representative's receipt of notice of such application from the Administrative Agent, and the Administrative Agent shall be permitted to make book entries on its loan systems to implement such cashless repayment of Existing US Secured Obligations and funding of Revolving Loans to US Borrower hereunder as described in the preceding sentence based on the amounts reflected in the Administrative Agent's records. In furtherance of the foregoing, the Administrative Agent is authorized to make the payments and Borrowings set forth in each Weekly Collections Report delivered to the Administrative Agent in accordance with Section 5.01(i)(viii).

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

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section 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 any Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower to which such Loan is made shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns) except to the extent that such Lender returns such promissory note or notes for cancellation and requests that such Loans be evidenced as set forth in Section 2.10(c) and (d).

Section 2.11 Prepayment of Loans.

(a) Each Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (g) of this Section, and each such voluntary prepayment shall be applied in accordance with Section 2.11(f) below.

(b) Notwithstanding Section 2.10(b), and without limitation thereof, except to the extent resulting from changes of the Exchange Rate for Euros after the immediately preceding Calculation Date (provided in that case the Netherlands Borrower shall be required to make the following payments on the next Calculation Date), in the event and on such occasion that (i) the USD Equivalent of the Aggregate Credit Exposure, plus the aggregate principal amount of any Reinstated Existing Secured Obligations, plus the aggregate principal amount of any Existing Secured Obligations, in each case, with respect to the Borrowers, collectively exceeds the sum of the total Revolving Commitments (less Reserves (other than Reserves which Administrative Agent elects not to deduct for such purpose in its sole discretion)), (ii) the USD Equivalent of the Revolving Exposures (excluding Revolving Netherlands Exposure), plus the aggregate principal amount of any Reinstated Existing US Secured Obligations with respect to "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement), plus the total "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, collectively exceeds the US Borrowing Base, (iii) the USD Equivalent of the total Revolving Netherlands Exposure, plus the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), plus the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, relating to the Netherlands Borrower, exceeds the sum of the total Revolving Netherlands Sublimit, (iv) the USD Equivalent of the total Revolving Netherlands Exposure, plus the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), plus the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, relating to the Netherlands Borrower, collectively exceeds the Netherlands Borrowing Base or (v) the USD Equivalent of the total Revolving Exposures relating to the Netherlands Borrower, plus any Reinstated Existing Netherlands Secured Obligations, plus the total "Revolving Exposure" (as such term is defined in the Existing Credit Agreement) with respect to the Netherlands Borrower under the Existing Credit Agreement, collectively exceeds the Libbey Europe Sublimit, then each such Borrower shall prepay its Revolving Loans, LC Exposure and/or Swingline Loans in an aggregate USD Equivalent amount equal, when taken together with any contemporaneous prepayment by the other Borrower, to such excess.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, the Borrowers shall, immediately after such Net Proceeds are received by any Loan Party, prepay the Obligations as set forth in Section 2.11(f) below in an aggregate amount equal to 100% of such Net Proceeds.

(d) In the event that an Existing Administrative Agent or any of the Existing Lenders are required to repay or disgorge to Debtors or any representatives of the Debtors' estate (as agents, with derivative standing or otherwise) all or any portion of the Existing Secured Obligations authorized and directed to be repaid pursuant to the Financing Order, or any payment on account of the Existing Secured Obligations made to an Existing Administrative Agent or any Existing Lender is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of any applicable Bankruptcy Code or other applicable insolvency laws or any applicable state or provincial law, or any other similar provisions under any other state, federal or provincial statutory or common law (all such amounts being hereafter referred to as the "Avoided Payments"), then, in such event, Borrowers shall prepay the Obligations in an amount equal to 100% of such Avoided Payments immediately upon receipt of the Avoided Payments by Debtors or any representative of the Debtors' estate in accordance with Section 2.11(f).

(e) Upon receipt by any Loan Party or any Subsidiary of the proceeds from the incurrence of Indebtedness or issuance and sale of any Indebtedness securities, subject to the terms of the Intercreditor Agreement, prepay the outstanding principal amount of the Obligations in accordance with Section 2.11(f) in an amount equal to 100% of the Net Proceeds of such incurrence.

(f) Each prepayment pursuant to Section 2.11(d) shall, (A) if such prepayment is in connection with an Avoided Payment on account of Existing US Secured Obligations, (1) so long as the Administrative Agent has not elected or Required Lenders have not directed application of payments in the manner set forth in Section 2.18(b) during the continuance of a Default or Event of Default, be applied, *first*, to the outstanding principal amount of the Revolving Loans (*first*, with application to the US Loans, *second*, with application to the Netherlands Loans) until paid in full and *second*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding LC Exposure, and (2) if a Default or Event of Default has occurred and is then continuing and the Administrative Agent has so elected or Required Lenders have so directed, be applied in the manner set forth in Section 2.18(b) and (B) if such prepayment is in connection with an Avoided Payment on account of Existing Netherlands Secured Obligations, (1) so long as the Administrative Agent has not elected or Required Lenders have not directed application of payments in the manner set forth in Section 2.18(b) during the continuance of a Default or Event of Default, be applied, *first*, to the outstanding principal amount of the Revolving Loans (*first*, with application to the Netherlands Loans, *second*, with application to the US Loans) until paid in full and *second*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding LC Exposure, and (2) if a Default or Event of Default shall have occurred and be continuing and the Administrative Agent has so elected or Required Lenders have so directed, be applied in the manner set forth in Section 2.18(b). Each prepayment pursuant to Section 2.11(a), (c) and (e) shall, (A) if such prepayment is in connection with a US Loan Party or any other Loan Party that is not a Netherlands Loan Party, (1) so long as the Administrative Agent has not elected or Required Lenders have not directed application of payments in the manner set forth in Section 2.18(b) during the continuance of a Default or Event of Default, be applied, *first*, to reduce the balance of the Existing US Secured Obligations (excluding guaranties of Existing Netherlands Secured Obligations) in the manner set forth in the Existing Credit Agreement, *second*, to reduce the balance of the US Loans outstanding, *third*, to reduce the balance of the Netherlands Loans outstanding, *fourth*, to reduce the balance of the Existing Netherlands Secured Obligations in the manner set forth in the Existing Credit Agreement, *fifth*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding LC Exposure, *sixth*, to reduce the balance of the Terminated Swap Obligations, and, thereafter, to the US Borrower or such other Person entitled thereto under applicable law and (2) if a Default or Event of Default shall have occurred and be continuing and the Administrative Agent has so elected or Required Lenders have so directed, be applied in the manner set forth in Section 2.18(b) and (B) if such prepayment is in connection a Netherlands Loan Party, (1) so long as Administrative Agent has not elected or Required Lenders have not directed application of payments in the manner set forth in Section 2.18(b) during the continuance of a Default or Event of Default, be applied, *first*, to reduce the balance of the Netherlands Loans outstanding, *second* to reduce the balance of the Existing Netherlands Secured Obligations in the manner set forth in the Existing Credit Agreement, *third*, to reduce the balance of the Existing US Secured Obligations in a manner set forth in the Existing Credit Agreement, *fourth*, to reduce the balance of the US Loans outstanding, *fifth*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding LC Exposure, *sixth*, to reduce the balance of the Terminated Swap Obligations, and, thereafter, to Netherlands Borrower or such other Person entitled thereto under applicable law and (2) if an Default or Event of Default shall have occurred and be continuing and the Administrative Agent has so elected or Required Lenders have so directed, be applied in the manner set forth in Section 2.18(b).

(g) The Borrower Representative shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by facsimile) of any prepayment hereunder other than any prepayment pursuant to Section 2.10(b), 2.11(b) or 2.11(d) (i) in the case of prepayment of a Eurocurrency Borrowing, not later than noon, Local Time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of a CBFR Borrowing, not later than noon, Local Time, one (1) Business Day before the date of the prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than noon, Local Time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13.

Section 2.12 Fees.

(a) The US Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily amount of such Lender's Applicable Percentage of the Available Commitment during the period from and including the Effective Date to but excluding the date on which the Lenders' Commitments terminate. Accrued commitment fees shall be payable in arrears on the first Business Day of each month and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(b) The US Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurocurrency Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Revolving Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each calendar month shall be payable on the first Business Day of each month, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within ten (10) Business Days after written demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed.

(c) The Borrowers jointly and severally agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

Section 2.13 Interest.

(a) The Loans comprising each CBFR Borrowing (including each Swingline Loan) shall bear interest at the CB Floating Rate plus the Applicable Rate.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such borrowing plus the Applicable Rate.

(c) Each Protective Advance shall bear interest at the CB Floating Rate plus the Applicable Rate for Revolving Loans plus 2%; provided that any Protective Advance made in Euros shall bear interest at an interest rate reasonably determined by the Administrative Agent to compensate the applicable Lenders for such Borrowing in Euros for the applicable period plus 2%.

(d) Notwithstanding the foregoing, during the occurrence and continuance of (A) an Event of Default, upon notice by the Required Lenders or Administrative Agent to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates) or (B) a Default of the type described in Article VII (a), (h) or (i), (X) all Loans and the Terminated Swap Obligations shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section (and the Terminated Swap Obligations pursuant to Section 2.26 providing that the Terminated Swap Obligations shall bear interest as if they were Loans) and (Y) any participation fee payable pursuant to Section 2.12 with respect to participations in Letters of Credit shall accrue at 2% plus the Applicable Rate used to determine the interest rate applicable to Eurocurrency Revolving Loans as provided hereunder. Notwithstanding the foregoing, if any interest on any Loan, any Terminated Swap Obligation, or any fee or other amount (other than in respect of principal of the Loans or any participation fee payable pursuant to Section 2.12 with respect to participations in Letters of Credit) payable by the Borrowers hereunder is not paid when due, whether at Stated Maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate applicable to CBFR Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to the proviso to paragraph (c) or paragraph (d) of this Section, and interest accrued with respect to Loans to the Netherlands Borrower which do not bear interest at a rate determined by reference to the Adjusted LIBO Rate, shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a CBFR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the CB Floating Rate at times when the CB Floating Rate is based on the Prime Rate or by reference to an interest rate reasonably determined by the Administrative Agent shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed. The applicable CB Floating Rate, Adjusted LIBO Rate, LIBO Rate or any other interest rate applicable in accordance with the terms hereof shall be determined by the Administrative Agent in accordance with the terms hereof, and such determination shall be conclusive absent manifest error.

(g) The parties agree that any "Interest Periods" (as such term is defined under the Existing Credit Agreement) in existence as of the date hereof shall be deemed to be continuing Interest Periods under this Agreement. In addition, the parties hereto agree (including each Lender under the Existing Credit Agreement and each Administrative Agent under the Existing Credit Agreement by virtue of their execution of this Agreement) that, notwithstanding anything to the contrary set forth in the Existing Credit Agreement, all Existing Secured Obligations shall bear interest in accordance with the terms and provisions of this Agreement rather than the Existing Credit Agreement (including, without limitation, by reference to the Applicable Rate hereunder rather than the Applicable Rate as defined in the Existing Credit Agreement, and to the interest rate applicable to the Existing Secured Obligations not automatically increasing by 2% by virtue of the commencement of the Bankruptcy Cases and instead only bearing interest at a rate 2% higher than the rates otherwise applicable thereto when the Loans hereunder bear interest at a rate 2% higher than the otherwise applicable rate pursuant to Section 2.13(d) of this Agreement).

Section 2.14 Alternate Rate of Interest

(a) If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including, without limitation, by means of an Interpolated Rate or because the LIBO Screen Rate is not available or published on a current basis) for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time;

then the Administrative Agent shall give notice thereof to the Borrower Representative and the Lenders by telephone or facsimile as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing shall be ineffective and any such Eurocurrency Borrowing shall be repaid or, if denominated in dollars, converted into a CBFR Borrowing on the last day of the then current Interest Period applicable thereto and, in the case of a Eurocurrency Borrowing denominated in Euros, such Borrowing shall thereafter bear interest at the rate of interest as described in clause (C) below, (B) if any request for a Borrowing requests a Eurocurrency Borrowing denominated in dollars, such Borrowing shall be made as a CBFR Borrowing and (C) if any request for a Borrowing requests a Eurocurrency Borrowing denominated in Euros, such Borrowing shall be made as a Borrowing bearing interest at an interest rate reasonably determined by the Administrative Agent to compensate the applicable Lenders for such Borrowing in Euros for the applicable period.

(b) If any Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain, fund or continue any Eurocurrency Borrowing, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligations of such Lender to make, maintain, fund or continue Eurocurrency Loans or to convert CBFR Borrowings to Eurocurrency Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers will upon demand from such Lender (with a copy to the Administrative Agent), either prepay or convert all Eurocurrency Borrowings of such Lender to CBFR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrowers will also pay accrued interest on the amount so prepaid or converted.

(c) 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 the 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 proposed 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 will occur prior to the applicable Benchmark Transition Start Date.

(d) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(e) 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, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, 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 2.14.

(f) Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing shall be ineffective and any such Eurocurrency Borrowing shall be repaid or converted into a CBFR Borrowing on the last day of the then current Interest Period applicable thereto, and (ii) if any Borrowing Notice requests a Eurocurrency Borrowing, such Borrowing shall be made as a CBFR Borrowing.

Section 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank; or

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then such Borrower will pay to such Lender or the Issuing Bank, as the case may be, the minimum additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered. For the avoidance of doubt, no compensation for increased costs shall be paid to the extent they are already compensated pursuant to Section 2.17 below or would have been compensated but were not so compensated solely because they are Excluded Taxes.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on a Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time such Borrower will pay to such Lender or the Issuing Bank, as the case may be, the minimum additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. Such Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that such Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(c) and is revoked in accordance therewith), or (d) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19, then, in any such event, such Borrower shall compensate each affected Lender for the loss, cost and expense actually incurred by such Lender and attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall not exceed an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the Eurocurrency market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower Representative and shall be conclusive absent manifest error. Such Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

Section 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of the Borrowers under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, except as required by applicable law; provided that if a Loan Party shall be required to deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (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) such Loan Party shall make such deductions and withholdings and (iii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) The Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Loan Parties shall indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes paid by such Person or paid on such Person's behalf or imposed on such Person, as the case may be (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto (including reasonable attorneys' and tax advisors' fees and expenses), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower Representative by a Lender or the Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or the Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower to a Governmental Authority, the Borrower Representative shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax, including from claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, or is subject to U.S. federal withholding Tax imposed by FATCA under the law of the jurisdiction in which a Borrower to which it makes a loan is organized or a resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower Representative (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower Representative, such properly completed and executed documentation (including a certificate, substantially in the form of Exhibit J-1, J-2, J-3 or J-4, as applicable, if claiming the benefits of the exemption for portfolio interest) prescribed by applicable law or reasonably requested by the Borrower Representative as will permit such payments to be made without withholding or at a reduced rate of withholding or to comply with the obligations under FATCA. Notwithstanding anything to the contrary in this Section 2.17(e), the completion, execution and submission of such documentation shall not be required if in the Foreign Lender's reasonable judgment such completion, execution or submission would subject such Foreign Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Foreign Lender.

(f) If the Administrative Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by a Borrower or with respect to which such Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that such Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(f), in no event will any Lender or the Administrative Agent be required to pay any amount to a Borrower pursuant to this Section 2.17(f) the payment of which would place such Lender or the Administrative Agent in a less favorable net after-Tax position than such Lender or the Administrative Agent would have been in if the tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrowers or any other Person.

(g) Each Lender that makes a Loan to the US Borrower that is not a Foreign Lender with respect to the US Borrower shall deliver to the Borrower Representative (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower Representative, a properly completed and executed IRS Form W-9 (or applicable successor form) certifying that such Lender is not subject to backup withholding.

Section 2.18 Payments Generally; Allocation of Proceeds; Sharing of Set-offs.

(a) Each Borrower shall make each payment or prepayment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m., Chicago time, in the case of Loans denominated in dollars, or 2:00 p.m., London time, in the case of Loans denominated in Euros, on the date when due or the fixed date for any prepayment hereunder, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 10 South Dearborn Street, 22nd Floor, Chicago, Illinois, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly 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. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars or Euros, as applicable. At all times that full cash dominion is in effect pursuant to Article VII of the US Security Agreement or as a result of a Netherlands Trigger Event, solely for purposes of determining the amount of Loans available for borrowing purposes, checks (in addition to immediately available funds applied pursuant to Section 2.10(b)) from collections of items of payment and proceeds of any Collateral pledged to secure any Borrower's Obligations shall be applied in whole or in part against such Borrower's Obligations, on the Business Day after receipt, subject to actual collection.

(b) Any proceeds of Collateral received by the Administrative Agent or the Existing Administrative Agents on behalf of any Borrower or any Loan Party (shall, if received in its capacity as a depositing bank be applied as set forth in the applicable Deposit Account Control Agreement) and any other such proceeds (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower making such payment), (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account or the Netherlands Collection Account when full cash dominion is in effect (which shall be applied in accordance with Section 2.10(b)) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, such funds shall be applied ratably first, to reduce the balance of any Existing US Secured Obligations (excluding any guaranties of Existing Netherlands Secured Obligations) in a manner set forth in the Existing Credit Agreement, second, to pay any fees, indemnities, or expense reimbursements then due including amounts then due to the Administrative Agent and the Issuing Bank from, or on behalf of, Borrowers (other than in connection with Banking Services or Swap Obligations), third, to pay any fees or expense reimbursements then due to the Lenders from, or on behalf of, Borrowers (other than in connection with Banking Services or Swap Obligations), fourth, to pay interest due in respect of the Protective Advances made to, or on behalf of, Borrowers, fifth, to pay the principal of such Protective Advances, sixth, to pay interest then due and payable on the US Loans made to, or on behalf of, US Borrower (other than the Protective Advances) ratably, seventh, to prepay principal on the US Loans made to, or on behalf of, the US Borrower (other than the Protective Advances and unreimbursed LC Disbursements in respect of Letters of Credit requested by such Borrower), eighth, to pay interest then due and payable on the Netherlands Loans made to, or on behalf of the Netherlands Borrower (other than the Protective Advances), ninth, to reduce the balance of any Existing Netherlands Secured Obligations in a manner set forth in the Existing Credit Agreement; tenth, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate undrawn face amount of all outstanding Letters of Credit requested by, or on behalf of, Borrowers and the aggregate amount of any unpaid LC Disbursements in respect of Letters of Credit requested by, or on behalf of, Borrowers, to be held as cash collateral for such Obligations, eleventh, to payment of amounts owing with respect to Terminated Swap Obligations and any amounts owing with respect to Banking Services Obligations and Swap Obligations constituting Secured Obligations, and twelfth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender. Notwithstanding the foregoing, the Administrative Agent may in its sole discretion apply proceeds of Collateral either solely to US Obligations and Existing Secured Obligations or solely to Netherlands Obligations and Existing Netherlands Secured Obligations (but with respect thereto, in the order set forth above) as determined by the Administrative Agent to be in the best interest of the Administrative Agent and the Lenders to maximize the overall recovery of the Administrative Agent and Lenders in respect of the Secured Obligations, so long as such application does not result in any application of amounts to clauses eleventh and twelfth above.

Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative and except as set forth in Section 2.10 and Section 2.11, or unless an Event of Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment which it receives to any Eurocurrency Loan of a Class made to any Borrower, except (a) on the expiration date of the Interest Period applicable to any such Eurocurrency Loan or (b) in the event, and only to the extent, that there are no outstanding CBFR Loans of the same Class and, in any such event, such Borrower shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations of such Borrower. Notwithstanding anything in this clause (b) to the contrary, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents by any Borrower, may be paid from the proceeds of Borrowings made hereunder by such Borrower whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of such Borrower maintained with the Administrative Agent. Each Borrower hereby irrevocably authorizes (i) the Administrative Agent to make a Borrowing by such Borrower for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents (after the expiration of any grace or cure periods with respect to such other amounts) by such Borrower and agrees that all such amounts charged shall constitute Loans (including Swingline Loans, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees and expenses as described in Section 9.03) and that all such Borrowings shall be deemed to have been requested by such Borrower pursuant to Sections 2.03, 2.04 or 2.05, as applicable and (ii) the Administrative Agent to charge any deposit account of such Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents by such Borrower.

(d) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to such Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the Borrower Representative prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that any Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) If any Lender shall fail to make any payment required to be made by it hereunder, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations hereunder until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and apply any such amounts to, any future funding obligations of such Lender; provided that as between the Loan Parties, the Administrative Agent and such Lender, such amounts received by the Administrative Agent and paid by the Loan Parties for the account of such Lender shall be considered applied to the Obligations intended to be paid by the Loan Parties.

Section 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then:

(i) such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (x) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (y) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (and such Borrower hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment);

(ii) such Borrower may, at its sole expense and effort, require such Lender or any Defaulting Lender (herein, a "Departing Lender"), upon notice to the Departing Lender and the Administrative Agent, to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (x) such Borrower shall have received the prior written consent of the Administrative Agent (and if a Revolving Commitment is being assigned, the Issuing Bank), which consent shall not unreasonably be withheld, (y) the Departing Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or such Borrower (in the case of all other amounts) and (z) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Departing Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling a Borrower to require such assignment and delegation cease to apply.

(b) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment or waiver which pursuant to the terms of Section 9.02 requires the consent of all Lenders, Supermajority Lenders or of all Lenders directly affected thereby and with respect to which the Required Lenders shall have granted their consent, then the US Borrower shall be permitted to replace such Non-Consenting Lender (unless such Non-Consenting Lender grants such consent); provided that (i) such replacement does not conflict with any Requirement of Law, (ii) the replacement financial institution shall purchase, at par, all Loans and other amounts owing to such replaced Lender on or prior to the date of replacement, (iii) the Borrower shall be liable to such replaced Lender under Section 2.16 if any Eurocurrency Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (iv) the replacement financial institution shall be reasonably satisfactory to the Administrative Agent, (v) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 9.04 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), and (vi) any such replacement shall not be deemed to be a waiver of any rights that the US Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

Section 2.20 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender.

- (a) fees shall cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);
- (b) the Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender;
- (c) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:
 - (i) all or any part of such Swingline Exposure and LC Exposure shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent (x) the sum of all non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the total of all non-Defaulting Lenders' Revolving Commitments, (y) the conditions set forth in Section 4.02 are satisfied at such time and (z) the other loan limits set forth in this Agreement are satisfied; and
 - (ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrowers shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;
 - (iii) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to Section 2.20(c), the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;
 - (iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to Section 2.20(c), then the fees payable to the Lenders pursuant to Section 2.12(a) and Section 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; or
 - (v) if any Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to Section 2.20(c), then, without prejudice to any rights or remedies of the Issuing Bank or any Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until such LC Exposure is cash collateralized and/or reallocated;
- (d) the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(c), and participating interests in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(c)(i) (and Defaulting Lenders shall not participate therein); and

(e) in the event and on the date that each of the Administrative Agent, the Borrowers, the Issuing Bank and the Swingline Lender agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the other Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 2.21 Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Secured Obligations of any Borrower, the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Secured Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

Section 2.22 [Reserved]

Section 2.23 Existing Banking Services Obligations. All Existing Banking Services Obligations shall be deemed to have been incurred pursuant hereto, and from and after the Effective Date shall be subject to and governed by the terms and conditions hereof and shall constitute Banking Services Obligations hereunder, as applicable. Each Lender providing Banking Services hereby assumes and agrees to perform any and all duties, obligations and liabilities to be performed or discharged by such Lender in accordance with and pursuant to the Existing Credit Agreement and this Agreement, as applicable. Borrowers agree to execute and deliver such documentation, if any, requested by the Administrative Agent or the applicable Lender to evidence, record, or further the foregoing deemed re-incurrence.

Section 2.24 Superpriority. Except as set forth herein, in the Intercreditor Agreement or in the Financing Order, no other claim having a priority superior or pari passu to that granted to the Administrative Agent and the Lenders by the Financing Order shall be granted or approved while any Secured Obligations under this Agreement or Existing Secured Obligations under the Existing Credit Agreement remain outstanding, other than with respect to the Carve Out, subject to the terms, conditions and limitations set forth in the Financing Order. Except for the Carve Out and subject to entry of the Final Financing Order, no costs or expenses of administration shall be imposed against the Administrative Agent, the Lenders or any of the Collateral or any of the Existing Administrative Agents, the Existing Lenders or the Collateral (as defined in the Existing Credit Agreement) under Sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, and each of the Loan Parties hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under Sections 105, 506(c) or 552, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the Administrative Agent, Lenders or any of the Collateral or any of the Existing Administrative Agents or the Existing Lenders.

Section 2.25 Waiver of Priming Rights. On and after the Effective Date, and on behalf of themselves and their estates, and for so long as any Secured Obligations or Existing Secured Obligations shall be outstanding, the US Borrowers and the US Loan Guarantors hereby irrevocably waive any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or greater priority than the DIP Liens securing the Secured Obligations, or to approve a claim of equal or greater priority than the Secured Obligations, in each case other than the Carve Out subject to the terms, conditions and limitations set forth in the Financing Order, or as otherwise contemplated herein or by the Term Loan Documents.

Section 2.26 Terminated Swap Obligations. On and after the Effective Date the Terminated Swap Obligations shall be deemed US Obligations due and owing under this Agreement and shall bear interest from and after the date hereof as if such amount were a Revolving Loan made to US Borrower hereunder (subject to the higher Applicable Rate applicable with respect to Terminated Swap Obligations) and shall be subject to all of the provisions set forth herein with respect to the accrual and payment of interest in respect of US Loans (including, without limitation, interest rate elections with respect thereto and required interest payment dates); provided, however, that unless Administrative Agent shall otherwise direct Borrower Representative in writing at least 1 Business Day prior to the date on which interest is due and payable with respect to Terminated Swap Obligations (in which case US Borrower shall pay such interest to Administrative Agent in a manner consistent with the payment of interest in respect of US Loans), US Borrower shall pay accrued interest in respect of the Terminated Swap Obligations directly to the applicable Lenders holding such Terminated Swap Obligations rather than paying such interest to the Administrative Agent. US Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of the Terminated Swap Obligations on the Maturity Date. For the avoidance of doubt, the Terminated Swap Obligations shall not constitute "Loans" or "Revolving Loans" hereunder, and the principal amount thereof shall not be included in any determinations of "Availability" or "US General Availability" hereunder.

ARTICLE III

Representations and Warranties

Each Loan Party represents and warrants to the Lenders that after giving effect to the transactions on the Effective Date:

Section 3.01 Organization; Powers. Each of the Loan Parties and each of its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent the concept of "good standing" is recognized thereunder), (b) except where the failure to have such power and authority could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, has all requisite power and authority to carry on its business as now conducted and is qualified to do business in, and (c) is in good standing (to the extent the concept of "good standing" is recognized in the applicable jurisdiction) in, every jurisdiction where such qualification is required except where the failure to be in good standing could not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. Subject to the entry of the Financing Order and the terms thereof, the Transactions are within each Loan Party's corporate or organizational powers and have been duly authorized by all necessary organizational and, if required, stockholder (or equity holder, as applicable) action. Subject to entry of the Financing Order, the Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other 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 3.03 Governmental Approvals; No Conflicts. Subject to entry of the Financing Order, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party or any of its Subsidiaries, other than violations arising as a result of the commencement of the Bankruptcy Cases and except as otherwise excused by the Bankruptcy Code, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any of its Subsidiaries or its assets (other than violations arising as a result of the commencement of the Bankruptcy Cases and except as otherwise excused by the Bankruptcy Code), or give rise to a right thereunder to require any payment to be made by any Loan Party or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party or any of its Subsidiaries, except Liens created pursuant to the Loan Documents and Liens permitted hereunder, except, in each case (other than with respect to clause (d)), as could not reasonably be expected individually or in the aggregate, to result in a Material Adverse Effect.

Section 3.04 Financial Condition; No Material Adverse Change.

(a) Holdings has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the fiscal year ended December 31, 2019, reported by Deloitte & Touche LLP, independent public accountants. Such financial statements, together with all other financial statements delivered pursuant to the Existing Credit Agreement or this Agreement thereafter relating to the Loan Parties and their Subsidiaries that have been delivered by any Loan Party to the Administrative Agent or the Lenders (or to the Administrative Agent or Lenders under the Existing Credit Agreement) present fairly, in all material respects, the financial position and results of operations and cash flows of Holdings and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments).

(b) Except the filing, commencement and continuation of the Bankruptcy Cases and any litigation resulting therefrom, no event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect since the Filing Date.

Section 3.05 Properties.

(a) As of the Effective Date, Schedule 3.05 (i) sets forth the address of each parcel of real property that is owned or leased by any Loan Party and (ii) identifies any such parcel of owned real property with respect to which the Loan Documents will not, as of the Effective Date, create legal and valid Liens on such parcel of real property and all of the buildings, improvements, structures and fixtures located on such parcel of real property in accordance with the terms and conditions of the Loan Documents (each, a "Non-Mortgaged Property"). Except as could not reasonably be expected to have a Material Adverse Effect, each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and, to the knowledge of the applicable Loan Party, no default by any party to any such lease or sublease exists (other than any default cause by the commencement of the Bankruptcy Cases). Each of the Loan Parties and its Subsidiaries has good and marketable title to, or valid leasehold interests in, all its real and personal property, free of all Liens other than those permitted by Section 6.02.

(b) Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party and its Subsidiaries owns, or is licensed to use, all Intellectual Property used in its business as currently conducted, a correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and the use thereof by the Loan Parties and its Subsidiaries does not infringe in any material respect upon the rights of any other Person, and the Loan Parties' rights thereto are not subject to any licensing agreement or similar arrangement.

Section 3.06 Litigation and Environmental Matters.

(a) Other than the filing, commencement and continuation of the Bankruptcy Cases and any litigation resulting therefrom, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting the Loan Parties or any of their Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that directly involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (i) no Loan Party nor any of its Subsidiaries has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) no Loan Party nor any of its Subsidiaries (1) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law or (2) has become subject to any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 3.07 Compliance with Laws and Agreements.

(a) Other than violations arising as a result of the commencement of the Bankruptcy Cases and except as otherwise permitted by the Bankruptcy Code or pursuant to an order of the Bankruptcy Court, which order shall be in form and substance acceptable to the Administrative Agent, each Loan Party and its Subsidiaries is in compliance with all Requirements of Law applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

(b) If the Netherlands Borrower or any Netherlands Loan Guarantor is a credit institution (*kredietinstelling*) under the laws of the Netherlands, such party is in compliance with the applicable provisions of the Netherlands Financial Supervision Act and any implementing regulation.

Section 3.08 Investment Company Status. No Loan Party nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

Section 3.09 Taxes. Each Loan Party and its Subsidiaries has timely filed or caused to be filed all federal and other material Tax returns and reports required to have been filed and, except to the extent subject to the automatic stay in connection with the Bankruptcy Cases, has paid or caused to be paid all Taxes shown on such Tax returns and all other material Taxes that are imposed on them or any of their assets pursuant to a Requirement of Law, except Taxes (i) that are being contested in good faith by appropriate proceedings and for which such Loan Party or such Subsidiary, as applicable, has established adequate reserves determined in accordance with GAAP, or for the avoidance of doubt, (ii) for which a notice for the postponement of payment has been filed in accordance with the decree of the Dutch State Secretary of Finance of 22 April 2020 with nr. 2020-8499 (as replaced by the decree of 6 May 2020). Other than the tax assessment pending in Mexico against Libbey México, S. de R.L. de C.V. ("Libbey Mexico") with respect to its 2010 taxable year (the "Libbey Mexico Tax Assessment"), there are no proposed Tax deficiencies or assessments that, in the aggregate, are material to each Loan Party and its Subsidiaries, taken as a whole. The Loan Parties have provided a true, complete and correct description of the Libbey Mexico Tax Assessment to the Administrative Agent as of the Effective Date, and there have been no material adverse developments with respect to the Libbey Mexico Tax Assessment since the Effective Date. None of Holdings nor any Subsidiary of Holdings has guaranteed or otherwise has any liability in respect of the Libbey Mexico Tax Assessment, and no Lien exists with respect to any asset of any Loan Party or Subsidiary in favor of any Governmental Authority in respect of the Libbey Mexico Tax Assessment other than Liens on the assets of Libbey Mexico (but not the assets of Holdings or any other Subsidiary thereof). There are no Liens for any material Taxes on any assets of each Loan Party and its Subsidiaries (other than Liens automatically arising under the laws of Mexico with respect to the assets of Libbey Mexico (but not any other Loan Party or Subsidiary) in respect of the Libbey Mexico Tax Assessment).

Section 3.10 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. Except as could not reasonably be expected to result in a Material Adverse Effect, each (i) Employee Benefit Plan is compliance with, and has been operated in accordance with, the Code, ERISA, and all Requirements of Law, (ii) each Employee Benefit Plan intended by a Loan Party to be exempt under Section 401(a) of the Code is so exempt, and (iii) no Loan Party has any liability for an excise tax, fine, penalty, or damage from breach of fiduciary duty with respect to an Employee Benefit Plan.

Section 3.11 Disclosure. None of the information contained in the reports, the financial statements, certificates or other information (including public filings of Holdings) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) taken as a whole contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which such statements were made not misleading; provided that, with respect to pro forma and projected financial information, the Borrowers and Holdings represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered in light of the circumstances when made and, if such pro forma and projected financial information was delivered prior to Effective Date, as of the Effective Date. The Initial Approved Budget and each Weekly Cash Flow Forecast delivered thereafter are prepared in good faith based upon estimates and assumptions believed by management of the Borrowers to be reasonable in light of the current conditions and facts known to the Borrowers at the time delivered (it being understood that the Approved Budget and the Weekly Cash Flow Forecasts and the assumptions on which they were based, may or may not prove to be correct).

Section 3.12 Solvency of Foreign Subsidiaries.

(a) Immediately after the consummation of the Transactions to occur on the Effective Date (including guarantees and grants of security made under the Loan Documents and the Term Loan Documents), and immediately after the making of each Loan and the issuance of each Letter of Credit hereunder and the fundings under the Term Loan Documents, each Loan Party that is not a Debtor will be Solvent, (i) the fair value of the assets of such Loan Party that is not a Debtor, at a fair valuation, at such time exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of such Loan Party that is not a Debtor at such time are greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) such Loan Party that is not a Debtor at such time is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) such Loan Party that is not a Debtor at such time does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is then conducted and is proposed to be conducted thereafter. Each Mexico Loan Guarantor further agrees that it will not be considered insolvent pursuant to Article 2166 of the Mexican Federal Civil Code (*Código Civil Federal*) or its correlative provisions of the Civil Codes of the States that comprises Mexico or the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*) (or any successor provision).

(b) No Loan Party that is not a Debtor intends to, or will permit any of its Subsidiaries that are not Debtors to, and no Loan Party believes that it or any of its Subsidiaries that are not Debtors will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

Section 3.13 No Fraudulent Conveyance. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement, the Loan Documents with the intent to hinder, delay or defraud either present or future creditors of such Loan Party.

Section 3.14 Insurance. Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties and the Subsidiaries as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. The Borrowers and Holdings believe that the insurance maintained by or on behalf of the Loan Parties and the Subsidiaries is adequate.

Section 3.15 Capitalization and Subsidiaries. As of the Effective Date, Schedule 3.15 sets forth (a) a correct and complete list of the name and relationship to Holdings of each and all of Holdings' Subsidiaries, (b) a true and complete listing of each class of each of the Loan Parties' authorized Equity Interests, of which all of such issued shares are validly issued, outstanding, fully paid and non-assessable (other than for those Subsidiaries that are limited liability companies and limited partnerships and to the extent such concepts are not applicable in the relevant jurisdiction), and (other than shares issued by Holdings) owned beneficially and of record by the Persons identified on Schedule 3.15, and (c) the type of entity of Holdings and each of its Subsidiaries. All of the issued and outstanding Equity Interests owned by any Loan Party has been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and is fully paid and non-assessable.

Section 3.16 Security Interest in Collateral.

(a) Subject to the approval of the Bankruptcy Court and pursuant to the Financing Order, the provisions of this Agreement and the other Loan Documents create or will create legal and valid Liens on all the Collateral in favor of the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, and such Liens constitute or will constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and subject to the Intercreditor Agreement, except in the case of (a) liens permitted by Section 6.02, to the extent any such liens would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law or agreement (including, without limitation any Liens on Term Priority Collateral securing the Term Loan Obligations permitted hereunder to the extent provided in the Intercreditor Agreement), (b) the Carve Out and (c) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral, and provided that, (i) with respect to the Netherlands Collateral Documents, any required notification (*mededeling*), registration (*registratie of inschrijving*) or waiver (*afstand van recht*), as contemplated by the Netherlands Collateral Documents for purposes of the perfection of the security interests purported to be created by such documents, has been duly and timely made, completed or obtained, and (ii) with respect to the Mexico Collateral Documents, any required registration, as contemplated by the Mexico Collateral Documents for purposes of the perfection of the security interests purported to be created by such documents, has been or will be duly and timely made, completed or obtained.

(b) As to the Debtors, the entry of the Financing Order is effective to create in favor of the Administrative Agent, for the benefit of the Lenders, as security for the Secured Obligations, an allowed administrative expense in the Bankruptcy Cases having priority under Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses (including, without limitation, such expenses specified in Sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code, subject only to the Permitted Priority Liens and the Carve Out (the "Superpriority Claims").

(c) No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (x) the pledge or grant by Holdings or any of its Subsidiaries of the Liens purported to be created in favor of the Administrative Agent pursuant to this Agreement or any of the other Loan Documents or (y) the exercise by the Administrative Agent, any Existing Administrative Agent or any third party collateral agent holding Mexico Collateral of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to this Agreement, any of the other Loan Documents or created or provided for by applicable law), except as may be required in connection with the disposition of any pledged or transferred Collateral by laws generally affecting the offering and sale of securities or, solely with respect to the Debtors, the Financing Orders.

Section 3.17 Employment Matters. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of the Borrowers, threatened in writing. The hours worked by and payments made to employees of the Loan Parties and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, all payments due from any Loan Party or any Subsidiary, or for which any claim may be made against any Loan Party or any Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Loan Party or such Subsidiary.

Section 3.18 Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party and each of the other Transactions is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

Section 3.19 Intellectual Property. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party and its Subsidiaries owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect, nor does any Loan Party or its Subsidiaries know of any valid basis for any such claim. Except as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, the use of Intellectual Property by each Loan Party and its Subsidiaries does not infringe on the rights of any Person in any material respect.

Section 3.20 Federal Regulations. No part of the proceeds of any Loans, and no other extensions of credit hereunder, will be used for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. If requested by any Lender or the Administrative Agent, the relevant Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

Section 3.21 Senior Indebtedness. The Secured Obligations constitute permitted Indebtedness under Section 7.03(b)(2) of the Term Loan Agreement secured by Permitted Liens under clause (1) of the definition of that term contained in the Term Loan Agreement.

Section 3.22 Foreign Collateral Documents. The Collateral subject to a Lien under the Netherlands Collateral Documents, the Mexico Collateral Documents and the Portugal Collateral Documents to secure the Secured Obligations constitute substantially all of the real and personal property, and substantially all of the tangible and intangible property, of the Netherlands Loan Parties, the Mexico Loan Guarantors and the Portugal Loan Guarantor, respectively, and the entirety of the Equity Interests issued by the Netherlands Loan Parties, Mexico Loan Guarantors and the Portugal Loan Guarantor, respectively.

Section 3.23 Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries and their respective officers and employees and, to the knowledge of such Loan Party, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and are not knowingly engaged in any activity that would reasonably be expected to result in any Loan Party being designated as a Sanctioned Person. None of (a) any Loan Party, any Subsidiary or any of their respective directors, officers or employees, or (b) to the knowledge of any such Loan Party or Subsidiary, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions. The foregoing representations in this Section 3.23 will not apply to any party hereto to which Council Regulation (EC) 2271/96 (the "Blocking Regulation") applies, if and to the extent that such representations are or would be unenforceable by or in respect of that party pursuant to, or would otherwise result in a breach and/or violation of, (i) any provision of the Blocking Regulation (or any law or regulation implementing the Blocking Regulation in any member state of the European Union) or (ii) any similar blocking or anti-boycott law in the United Kingdom.

Section 3.24 EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

Section 3.25 Bankruptcy Cases. The Bankruptcy Cases were commenced on the Filing Date in accordance with applicable law and proper notice has been or will be given of (i) the motion seeking approval of the Loan Documents, the Interim Financing Order and the Final Financing Order, (ii) the hearing for the entry of the Interim Financing Order and (iii) the hearing for the entry of the Final Financing Order.

Section 3.26 Financing Order. The Loan Parties are in compliance with the terms and conditions of the Financing Order. Each of the Interim Financing Order (with respect to the period prior to the entry of the Final Financing Order) or the Final Financing Order (from after the date the Final Financing Order is entered) is in full force and effect and has not been vacated, reversed or rescinded, amended or modified (except as otherwise consented to by the Administrative Agent in its sole discretion) and no appeal of such order has been timely filed or, if timely filed, a stay pending such appeal is currently effective.

Section 3.27 Holding Companies/Dormant Entities

(a) Holdings does not engage in any business or activity other than the ownership of all the outstanding shares of capital stock of the US Borrower, Subsidiaries of the US Borrower and activities incidental thereto, including, without limitation, employee stock options and responsibilities of a public company. Holdings does not own any assets (other than Equity Interests of the US Borrower) or have any liabilities (other than liabilities under the Loan Documents, the Existing Loan Documents, the Term Loan Agreement or the Existing Term Loan Agreement and liabilities reasonably incurred in connection with its maintenance of its existence and Guarantees and other Indebtedness permitted under Section 6.01).

(b) Other than as disclosed in the Hong Kong Share Mortgage, Libbey Asia Limited does not engage in any business or activity other than the ownership of all the outstanding shares of capital stock of Libbey Trading (Beijing) Co., Ltd. and Libbey Glassware (China) Co., Ltd., and does not own any assets (other than Equity Interests Libbey Trading (Beijing) Co., Ltd. and Libbey Glassware (China) Co., Ltd.) or have any liabilities.

(c) Crisa Libbey, S.A. de C.V. does not engage in any business activity and does not own any assets or have any liabilities (other than any de minimis assets or liabilities relating to the maintenance of its existence).

Section 3.28 Netherlands Loan Parties

(a) For the purpose of the Insolvency Regulation, the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) for each Netherlands Loan Party is in the Netherlands and no Netherlands Loan Party has an establishment (as that term is used in Article 2 (10) of the Insolvency Regulation) in any other jurisdiction.

(b) There is currently no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in the Netherlands on any payment to be made by any Netherlands Loan Party or other Loan Party resident for tax purposes in the Netherlands pursuant to any Loan Document to which such Loan Party is a party.

(c) Each Netherlands Loan Party is resident for tax purposes in the Netherlands only and does not have a permanent establishment or other taxable presence outside the Netherlands.

ARTICLE IV

Conditions

Section 4.01 Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02), except to the extent that any of the following conditions precedent are permitted to be satisfied following the Effective Date as set forth on Schedule 5.23 (it being understood that the execution, delivery and release of a signature page to this Agreement by a Lender shall be deemed to constitute the approval by such Lender or any item referred to in this Section 4.01 that is required to be in form satisfactory to such Lender and the waiver of any condition described below to the extent that the Administrative Agent waived such condition):

(a) Credit Agreement and Loan Documents; Legal Opinions. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or electronic (including PDF) transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the other Loan Documents (other than Loan Documents that pursuant to the express terms hereof or thereof are not contemplated to be executed and delivered on the Effective Date) (provided, further, that for purposes of the Mexico Collateral Documents, the Administrative Agent (or its counsel) shall have received the notarial instruments containing the corresponding Mexico Collateral Documents, duly executed by the parties thereof and ratified before the presence of a Mexican notary public, except to the extent any such items are expressly addressed in Schedule 5.23), and such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and such other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender, in each case, as listed on the Closing Checklist and (iii) written opinion(s) of (A) the Loan Parties' New York and Netherlands counsels and (B) the Administrative Agent's Netherlands counsel, in each case, addressed to the Administrative Agent, the Issuing Bank and the Lenders.

(b) [Reserved]

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by a Financial Officer or other executive officer or, as the case may be, its managing directors, which shall (A) certify that (i) the representations and warranties contained in Article III of this Agreement are true and correct in all material respects on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date (provided, however, that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" is true and correct as so qualified in all respects), (ii) no Default or Event of Default exists or would result from the transactions proposed pursuant to this Agreement or from the application of the proceeds therefrom, and (iii) the Interim Financing Order is in full force and effect and has not (in whole or in part) been reversed, vacated or stayed, or amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent, (B) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (C) identify by name and title and bear the signatures of the Financial Officers and any other officers of such Loan Party, or such other Persons authorized to sign on behalf of such Loan Party, authorized to sign the Loan Documents to which it is a party, and (D) contain appropriate attachments, including, if applicable, the certificate or articles of incorporation or organization of each Loan Party certified, if applicable, by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement or, as the case may be, its articles of association, and (ii) to the extent available in such jurisdiction, a long form good standing certificate for each Loan Party from its jurisdiction of organization.

(d) [Reserved]

(e) Fees. The Administrative Agent shall have received all fees required to be paid, and all reasonable out-of-pocket expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), at least two (2) Business Days before the Effective Date.

(f) Lien Searches. Other than with regard to the Netherlands, Mexico, and Portugal jurisdictions, the Administrative Agent shall have received the results of a recent lien search in each of the jurisdictions where assets of the Loan Parties are located, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(g) [Reserved]

(h) [Reserved]

(i) [Reserved]

(j) [Reserved]

(k) Initial Approved Budget. The Administrative Agent shall have received an Initial Approved Budget in form and substance satisfactory to the Administrative Agent.

(l) Borrowing Base Certificate. The Administrative Agent shall have received an Aggregate Borrowing Base Certificate which calculate the respective Borrowing Bases of the applicable Borrowers as of April 30, 2020, with respect to Inventory, and May 22, 2020, with respect to Accounts, for the applicable Borrowers, in each case, with customary supporting documentation and supplemental reporting reasonably satisfactory to the Administrative Agent.

(m) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date and the issuance or deemed issuance of any Letters of Credit on the Effective Date, paydowns of Existing US Secured Obligations to be made on the Effective Date with the proceeds of Term Loan Obligations funded on the Effective Date, and payment of all fees and expenses due hereunder, the Aggregate Availability shall not be less than \$10,000,000.

(n) [Reserved]

(o) [Reserved]

(p) Filings, Registrations and Recordings. To the extent not already obtained and satisfied prior to the Effective Date, each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under local law or reasonably requested by the Administrative Agent to be filed, registered or recorded, in each case, as set forth on the Closing Checklist in order to create in favor of the Administrative Agent, for the benefit of the Lenders, a first priority perfected Lien (or second or third priority Lien on Term Priority Collateral, subject in priority only to the Liens securing the Term Loan Obligations to the extent provided in the Intercreditor Agreement and permitted by applicable law) on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.

(q) [Reserved].

(r) [Reserved].

(s) [Reserved].

(t) [Reserved].

(u) Approvals. Subject to entry of the Financing Order, all governmental and third party approvals necessary in connection with the execution of the Loan Documents, the Transactions and the continuing operations of each Borrower and its Subsidiaries shall have been obtained on terms reasonably satisfactory to the Administrative Agent, and shall be in full force and effect.

(v) [Reserved].

(w) Foreign Collateral. Subject to Section 5.23 of this Agreement, the Administrative Agent shall have received all information and/or documentation that the Administrative Agent, in its reasonable discretion, considers necessary or desirable in connection with the Netherlands Collateral, Mexico Collateral and Portugal Collateral.

(x) Term Loan Agreement and Intercreditor Agreement. The Term Loan Documents and the Intercreditor Agreement shall have been duly executed and delivered by each party thereto, and shall be in full force and effect, and in form and substance satisfactory to the Administrative Agent, and not less than \$30,000,000 of initial new money fundings (net of fees and expenses) shall have been made under the Term Loan Documents and the Administrative Agent shall have received not less than \$12,780,735.09 of such fundings for application to the Existing US Secured Obligations and fees payable to the Administrative Agent in connection with this Agreement.

(y) Other Documents; Process Agent. The Administrative Agent shall have received such other documents as set forth on the Closing Checklist as the Administrative Agent, the Issuing Bank or their counsel may have reasonably requested, all in form and substance reasonably acceptable to the Administrative Agent, the Issuing Bank and their counsel. Furthermore, each Mexico Loan Guarantor shall promptly but no later than two (2) Business Days after execution of this Agreement deliver to the Administrative Agent a certified copy of the public deed that contains a special irrevocable power of attorney for lawsuits and collections (*poder para pleitos y cobranzas*) in form and substance acceptable to the Administrative Agent, granted by each Mexico Loan Guarantor in favor of the Process Agent in terms of the first and fourth paragraphs of Article 2554 of the Federal Civil Code of Mexico (*Código Civil Federal*) and the corresponding provisions of the Civil Codes applicable in the States of Mexico (or any successor provisions) and in Mexico City, Mexico, in the presence of a Mexican notary public.

(z) Bankruptcy.

(i) The Bankruptcy Court shall have entered the Interim Financing Order, which Interim Financing Order (i) shall have been entered upon an application or motion of the Debtors satisfactory in form and substance to the Administrative Agent in its sole discretion and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by the Administrative Agent; (ii) shall be in full force and effect and shall not have been amended, modified or stayed, or reversed, except for amendments or modifications with the written consent of the Administrative Agent; and, if the Interim Financing Order is the subject of a pending objection, appeal or motion for reconsideration in any respect, neither the Interim Financing Order, nor the making of the Loans, the granting of Liens or Superpriority Claims, or the priority of such Liens and Superpriority Claims, or the performance by the Loan Parties of any of the Secured Obligations shall be the subject of a presently effective stay, and (iii) shall otherwise be in form and substance satisfactory to the Administrative Agent.

(ii) The Bankruptcy Cases shall have been commenced in the Bankruptcy Court, and all material "first day orders" and all material related orders to be entered at or promptly following the commencement of the Bankruptcy Cases shall have been provided in advance to the Administrative Agent and shall be in form and substance reasonably satisfactory to the Administrative Agent.

(iii) The Bankruptcy Court shall have entered a cash management order authorizing the Loan Parties to maintain and continue to use their cash management system in the ordinary course of business, which order shall be in form and substance reasonably satisfactory to the Administrative Agent (the "Cash Management Order").

Section 4.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrowers set forth in this Agreement that are qualified by materiality shall be true and correct and the representations and warranties that are not qualified by materiality shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable except to the extent that such representation or warranty expressly relates to an earlier date, in which case it shall be true and correct as of such date.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(c) After giving effect to any Borrowing or the issuance of any Letter of Credit, (i) the USD Equivalent of the Aggregate Credit Exposure, *plus* the aggregate principal amount of any Reinstated Existing Secured Obligations, *plus* the aggregate principal amount of any Existing Secured Obligations does not exceed the sum of the total Revolving Commitments (less Reserves (other than Reserves which Administrative Agent elects not to deduct for such purpose in its sole discretion)), (ii) the USD Equivalent of the total Revolving Exposures (excluding Revolving Netherlands Exposures), *plus* the aggregate principal amount of any Reinstated Existing US Secured Obligations with respect to "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Exposures" (excluding "Revolving Netherlands Exposures") (as each such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement does not exceed the US Borrowing Base, (iii) the USD Equivalent of the total Revolving Netherlands Exposures, *plus* the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, does not exceed the sum of the total Revolving Netherlands Sublimit, (iv) the USD Equivalent of the total Revolving Netherlands Exposure, *plus* the aggregate principal amount of any Reinstated Existing Netherlands Secured Obligations with respect to "Revolving Netherlands Exposures" (as such term is defined in the Existing Credit Agreement), *plus* the total "Revolving Netherlands Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, does not exceed the Netherlands Borrowing Base and (v) the USD Equivalent of the total Revolving Exposures, *plus* any Reinstated Existing Netherlands Secured Obligations, *plus* the total "Revolving Exposure" (as such term is defined in the Existing Credit Agreement) under the Existing Credit Agreement, in each case, relating to the Netherlands Borrower, does not exceed the Libbey Europe Sublimit.

(d) No injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against any Loan Party, the Administrative Agent, or any Lender.

(e) With respect to any Loan or Letter of Credit to be made or issued prior to the entry for the Final Financing Order, the Bankruptcy Court shall have entered the Interim Financing Order, which Interim Financing Order shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent, or

(f) With respect to any Loan or Letter of Credit to be made or issued after entry of the Final Financing Order, the Final Financing Order shall be in full force and effect and shall not have been reversed, vacated or stayed, and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent.

Except with respect to Protective Advances and the Settlement of Swingline Loans, each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section 4.02.

ARTICLE V

Affirmative Covenants

Until the Commitments have expired or been terminated and the Secured Obligations and the Existing Secured Obligations have been paid in full, each Loan Party executing this Agreement covenants and agrees, with the Lenders that:

Section 5.01 Financial Statements; Borrowing Base and Other Information. The Borrowers will furnish to the Administrative Agent, the Administrative Agent Consultant and each Lender:

(a) within 90 days after the end of each fiscal year of Holdings, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (other than as a result of the commencement of the Bankruptcy Cases, without a "going concern", emphasis of opinion" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants. Notwithstanding the foregoing, in the event that the US Borrower delivers an annual report on Form 10-K of Holdings for such fiscal year the Borrowers will be deemed to have delivered the financial statements required by this Section 5.01(a) on the date of such filing;

(b) within 55 days after the end of each of the first three fiscal quarters of Holdings (or, with respect to the fiscal quarter ended March 31, 2020, no later than June 29, 2020), its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of the Financial Officers of the Borrower Representative as presenting fairly in all material respects the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes. Notwithstanding the foregoing, in the event that the US Borrower delivers a quarterly report on Form 10-Q of Holdings for such fiscal quarter, the Borrowers will be deemed to have delivered the financial statements required by this Section 5.01(b) on the date of such filing;

(c) within 30 days after the end of each fiscal month of Holdings other than any month that is the last month of a fiscal quarter (or, with respect to the fiscal month ended May 31, 2020, 45 days after the end of such fiscal month), its consolidated and consolidating balance sheet, statements of cash flows and income statement as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) above, a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit G (i) certifying, in the case of the financial statements delivered under clause (b), as presenting fairly in all material respects the financial condition and results of operations of Holdings and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculation of Minimum Aggregate Availability, (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the most recently delivered audited financial statements that would affect the financial statements accompanying such certificate and specifying the effect of such change on the financial statements accompanying such certificate;

(e) concurrently with any delivery of financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their examination of such financial statements of any Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(f) as soon as available, but in any event not more than 60 days after the end of each fiscal year of Holdings, a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and funds flow statement) of Holdings for each quarter of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent;

(g) Following the delivery of the Initial Approved Budget on the Effective Date, (i) by 11:00 p.m. (New York City time) on the fourth Wednesday following the Filing Date and by 11:00 p.m. (New York City time) on each fourth Wednesday thereafter, the Borrowers shall provide the Administrative Agent and the Administrative Agent Consultant with an updated cash flow forecast for the Debtors, with line item detail of projected sales, disbursements, collections, net cash flows, the outstanding amount of Revolving Loans and the other items set forth in the Initial Approved Budget for the then-upcoming thirteen (13) week period, in each case, in substance reasonably satisfactory (such satisfaction not to be unreasonably withheld, delayed or conditioned) to and approved by the Administrative Agent and substantially consistent with the form of the Initial Approved Budget delivered on the Effective Date (the "Weekly Cash Flow Forecast") and (ii) by 11:00 p.m. (New York City time) on the fourth Wednesday following the Filing Date, and by 11:00 p.m. (New York City time) on each fourth Wednesday thereafter, a variance report (the "Variance Report") setting forth, on a consolidated basis, actual cumulative aggregate cash receipts, disbursements and cash flows of the Loan Parties for the most recent four-week period (as applicable) covered by such Variance Report and setting forth all the variances, on a line-item and aggregate basis, from the amount set forth for such period as compared to the Initial Approved Budget or the most recently Approved Budget delivered prior to such Variance Report on a weekly and cumulative basis for the period from the first week commencing after the Filing Date through the end of the week in regard to which such variance report is being delivered (which shall not exceed what is permitted by the Permitted Variance), and each such Variance Report shall include explanations for all material variances for the most recent four-week period in regard to which such variance report is being delivered and shall be certified by a Financial Officer of the Loan Parties. Notwithstanding the foregoing, except as set forth in the Financing Order, nothing in the Approved Budget shall limit the payment of allowed professional fees and expenses and restructuring expenses to the Professional Persons (as such term is defined in the Financing Orders).

In addition to the foregoing, upon the reasonable request of the Administrative Agent, Borrowers will, at its own expense, facilitate and hold calls between the Administrative Agent, the Administrative Agent Consultant and Lenders and their representatives, consultants, and agents, on the one hand, and members of the Borrowers' executive management team and their advisors, on the other hand, at least once every week. Upon the Administrative Agent's or the Administrative Agent Consultant's reasonable request, and subject to any confidentiality restrictions, Holdings and its Subsidiaries shall promptly provide copies of all non-privileged material written materials and reports (in each case, excluding drafts) produced by Holdings and its Subsidiaries and shared with third parties in connection with any sale, refinance, or other strategic transaction efforts, and any written indications of interest, letters of intent, draft purchase documents, and commitment letters received by Holdings and its Subsidiaries relating to such sale, refinance, or other strategic transaction efforts of Holdings and its Subsidiaries or any other non-privileged written materials as the Administrative Agent, the Administrative Agent Consultant and the Lenders may request from time to time; provided that such materials may be redacted to the extent information contained therein would adversely affect any attorney-client privilege; provided, further, that only final versions of such documents, or versions of such documents shared with third parties, shall be provided. Without limiting the foregoing, Borrowers agree to notify the Administrative Agent and the Administrative Agent Consultant promptly upon any Borrower or any Loan Party becoming aware of any material change or development relating to any sale or refinance efforts or to the financial, collateral, or operational condition, businesses, assets, liabilities, or prospects of such Borrower or Loan Party, any of their respective Affiliates, or any of their respective Subsidiaries.

(h) as soon as available but in any event no later than the third Business Day of each week with respect to the immediately preceding week, and at such other times as may be reasonably requested by the Administrative Agent, an Aggregate Borrowing Base Certificate, together with a Borrowing Base Certificate for each Borrower which calculates such Borrower's Borrowing Base (it being understood that each such Borrowing Base Certificate shall reflect information regarding Accounts as of the last Business Day of the prior week (provided that with respect to Accounts excluded from Eligible Accounts, such information shall be reflected as of the last Business Day of the prior week only with respect to Account excluded from Eligible Accounts by virtue of being intercompany Accounts or past due beyond the length of time permitted by the definition of Eligible Accounts), but may reflect information regarding Inventory (and information regarding Accounts excluded from Eligible Accounts other than such Accounts that are excluded from Eligible Accounts that are required to be updated weekly pursuant to the immediately preceding parenthetical) as of the last day of the month most recently ending not more than 50 days prior to the delivery of such Borrowing Base Certificate), and supporting information in connection therewith, together with any additional reports with respect to the Borrowing Base of any Borrower as the Administrative Agent may reasonably request;

(i) as soon as available but in any event within 20 days of the end of each calendar month (or with respect to clauses (i) and (viii) below, no later than the third Business Day of each week), and at such other times as may be reasonably requested by the Administrative Agent, as of the period then ended, all delivered in a manner reasonably acceptable to the Administrative Agent:

(i) a detailed aging of the Accounts by customer of each US Loan Party and Netherlands Loan Party and reconciled to the Borrowing Base Certificate of each Borrower delivered as of such date prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the balance due for each Account Debtor;

(ii) a detailed aging of the Accounts of each US Loan Party and Netherlands Loan Party (1) including lists of all invoices aged by invoice date and due date (with an explanation of the terms offered) and (2) reconciled to the Borrowing Base Certificate of each Borrower delivered as of such date prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the balance due for each Account Debtor;

(iii) a schedule detailing the Inventory of each US Loan Party and Netherlands Loan Party, in form reasonably satisfactory to the Administrative Agent, (1) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process and finished goods), by product type, and by volume on hand, which Inventory shall be valued at the lower of cost (determined on a first-in, first-out basis) or market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower Representative are deemed by the Administrative Agent to be appropriate, (2) including a report of any variances or other results of Inventory counts performed by each US Loan Party and Netherlands Loan Party since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by each US Loan Party and Netherlands Loan Party and complaints and claims made against the Borrowers), and (3) reconciled to the Borrowing Base Certificate of each Borrower delivered as of such date;

(iv) a worksheet of calculations prepared by each US Loan Party and Netherlands Loan Party to determine Eligible Accounts, such worksheet detailing the Accounts excluded from Eligible Accounts and the reason for such exclusion;

(v) a worksheet of calculations prepared by each US Loan Party and Netherlands Loan Party to determine Eligible Inventory, such worksheet detailing the Inventory excluded from Eligible Inventory and the reason for such exclusion;

(vi) a reconciliation of the Accounts and Inventory of each US Loan Party and Netherlands Loan Party between the amounts shown in the Borrowers' general ledger and financial statements and the reports delivered pursuant to clauses (ii) and (iii) above;

(vii) a reconciliation of the loan balance per each Borrower's general ledger to the loan balances under this Agreement; and

(viii) until such time as all of the outstanding principal balance of Existing US Secured Obligations (excluding any guaranties of Existing Netherlands Secured Obligations) has been paid down to zero either pursuant to Section 2.02(e) or pursuant to the operation of Section 2.10(b), with respect to the immediately preceding week, a report of collections received by US Borrower in the Collection Account or otherwise received by US Borrower with respect to proceeds of Accounts, Inventory or other ABL Priority Collateral that are not otherwise applied as a prepayment of the Existing US Secured Obligations, in each case in the substantially the form of Exhibit H hereto (each such report, a "Weekly Collections Report").

(j) as soon as available but in any event no later than the third Business Day of each week, and at such other times as may be reasonably requested by the Administrative Agent, as of the week then ended, a schedule and aging of the Borrowers' and the other US Loan Parties' and Netherlands Loan Parties' accounts payable, delivered in a manner reasonably acceptable to the Administrative Agent;

(k) promptly upon the Administrative Agent's request:

(i) copies of invoices in connection with the invoices issued by any US Loan Party or Netherlands Loan Party in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory or Equipment purchased by any Loan Party; and

(iii) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(l) as soon as available but in any event within 20 days of the end of each calendar month, and at such other times as may be reasonably requested by the Administrative Agent, as of the period then ended, each US Loan Party's and Netherlands Loan Party's sales journal, cash receipts journal (identifying trade and non-trade cash receipts) and debit memo/credit memo journal;

(m) within 20 days of each June 30 and December 31, and at such other times as may be reasonably requested by the Administrative Agent, an updated customer list for each Borrower and its Subsidiaries, which list shall state the customer's name, mailing address and phone number, delivered in a manner reasonably acceptable to the Administrative Agent, and shall be certified as true and correct by a Financial Officer of the Borrower Representative;

(n) [reserved];

(o) (i) no later than five (5) Business Days prior to the effectiveness thereof, copies of substantially final drafts of any proposed amendment, waiver or other modification to the Term Loan Agreement or the other documents related to the Term Loan Obligations other than a supplement to add additional guarantors with respect to the Term Loan Obligations (so long as such guarantors also guaranty all of the Secured Obligations and such guaranty of the Term Loan Obligations is permitted by this Agreement) and (ii) promptly after receipt thereof by Holdings or any of its Subsidiaries, any Withdrawal Termination Instruction (as such term is defined in the Term Loan Agreement);

(p) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Holdings, any Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as the case may be;

(q) at least two days (or as soon as is reasonably practicable under the circumstances) prior to the date when the Debtors intend to file such document, copies of all material pleadings, motions, application and judicial information (including "first day" motions but excluding retention applications) that the Debtors intend to file with the Bankruptcy Court or provided by or to the Committees, at any time such document is filed or delivered, as applicable, and Debtors shall consult in good faith with the Administrative Agent regarding the form and substance of any such proposed filing (provided that any of the foregoing relating to the Credit Agreement, any Plan of Reorganization, any Disclosure Statement, any exit financing, the Plan Confirmation Order and related documents shall be deemed to be material);

(r) promptly following any request therefor, such other reasonably available information regarding the operations, business affairs and financial condition of Holdings or any Subsidiary, as the Administrative Agent, the Administrative Agent Consultant or any Lender may reasonably request;

(s) simultaneously with the delivery of each Funding Account Withdrawal Notice (as defined under the Term Loan Agreement) and all written financial reporting and other periodic reporting provided to Term Loan Agent under the Term Loan Documents, a copy of each such Funding Account Withdrawal Notice and all such written financial reporting or periodic reporting, as applicable;

(t) no later than the first Wednesday after the Effective Date and each Wednesday thereafter (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), (x) a 13-week cash flow forecast for the Debtors prepared in a manner consistent with the Approved Budget and otherwise in form and substance satisfactory to, the Administrative Agent, accompanied by, in each case, a weekly comparison to actual reporting, comparing the Debtors' actual receipts and disbursements for the prior calendar week with the projected receipts and disbursements for such prior calendar week, including a report from the Debtors identifying and addressing any variance of actual performance to projected performance for the prior calendar week and (y) a certificate of a Financial Officer of Borrower Representative reporting Liquidity (as defined in the Term Loan Agreement) as of the last Business Day of the immediately preceding week;

(u) no later than the second Wednesday after the Effective Date and each second Wednesday thereafter (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a 13-week cash flow forecast for the Subsidiaries of the Holdings organized under the laws of the Netherlands and Portugal on a consolidated basis for each country, prepared in a manner consistent with the Approved Budget and otherwise in form and substance satisfactory to, the Administrative Agent, accompanied by, in each case, a biweekly comparison to actual reporting, comparing the Netherland and Portugal Subsidiaries' actual receipts and disbursements for the prior two (2) calendar weeks with the projected receipts and disbursements for such prior two (2) calendar weeks, including a report from the Loan Parties identifying and addressing any variance of actual performance to projected performance for the prior two (2) calendar weeks; and

(v) no later than the second Wednesday after the Effective Date and each second Wednesday thereafter (or, to the extent such Wednesday is not a Business Day, the next Business Day thereafter), a 13-week cash flow forecast for the Subsidiaries of the Borrower organized under the laws of Mexico (the "Mexican Subsidiaries") on a consolidated basis, prepared in a manner consistent with the Approved Budget and otherwise in form and substance satisfactory to, the Administrative Agent, accompanied by, in each case, a biweekly comparison to actual reporting, comparing the Mexican Subsidiaries' actual receipts and disbursements for the prior two (2) calendar weeks with the projected receipts and disbursements for such prior two (2) calendar weeks, including a report from the Loan Parties identifying and addressing any variance of actual performance to projected performance for the prior two (2) calendar weeks.

Section 5.02 Notices of Material Events. The Borrowers and Holdings will furnish to the Administrative Agent, the Administrative Agent Consultant and each Lender prompt written notice of the following:

- (a) (i) the occurrence of any Default under this Agreement or (ii) any default or "Event of Default" (as defined in the Term Loan Agreement) under the Term Loan Agreement;
- (b) receipt of any written notice of any governmental investigation or any litigation or proceeding commenced or threatened against any Loan Party that (i) seeks damages in excess of \$500,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Laws involving liability in excess of \$500,000, (vi) contests any tax, fee, assessment, or other governmental charge in excess of \$500,000, or (vii) involves any product recall;
- (c) any Lien (other than Liens permitted by Section 6.02) or asserted against any of the Collateral;
- (d) any loss, damage, or destruction to the Collateral in the amount of \$500,000 or more, whether or not covered by insurance;
- (e) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;
- (f) notice of any litigation, investigation or proceeding with respect to the Secured Obligations, the Existing Secured Obligations, the Bankruptcy Cases and any transactions related thereto; and
- (g) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.03 Existence; Conduct of Business. Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, Intellectual Property rights, licenses and permits material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, in each case, except as could not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect and (b) carry on and conduct its business in substantially the same fields of enterprise as it is presently conducted or enterprises reasonably related thereto or reasonable extensions thereof.

Section 5.04 Payment of Obligations. Each Loan Party that is not a Debtor will, and will cause each Subsidiary that is not a Debtor to, pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same shall become delinquent or in default, except (a) where the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) where such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto if and to the extent required by GAAP or (c) as could not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.05 Maintenance of Properties. Each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.06 Books and Records; Inspection Rights. Each Loan Party will, and will cause each Subsidiary to, (i) keep proper books of record and account in which full, true and correct entries in all material respects in conformity with GAAP, are made of all dealings and transactions in relation to its business and activities and (ii) permit any representatives designated by the Administrative Agent, the Administrative Agent Consultant or any Lender (including employees of the Administrative Agent, the Administrative Agent Consultant or any Lender or any consultants, accountants, lawyers and appraisers retained by the Administrative Agent), upon reasonable prior notice during normal business hours, to visit and inspect its properties, to conduct field examinations, to examine and make extracts from its books and records, including environmental assessment reports and Phase I or Phase II studies, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided, however that Financial Officers of the Borrowers shall be entitled to participate in any discussion or meeting with the accountants and, absent the continuance of an Event of Default, Borrowers shall not be required to reimburse the Administrative Agent or the Lenders for more than one visit (and if there is more than one such visit in a fiscal year due to the occurrence and continuance of an Event of Default, the Administrative Agent shall be reimbursed for its visits before any Lender is so reimbursed for its visits) in any fiscal year (it being understood without limitation of the foregoing that any such visit prior to the Effective Date shall not count toward such limitation, and that there shall be no limitation on the frequency of such visits and inspections (x) if an Event of Default shall have occurred and be continuing or (y) such visit and/or inspection is paid for by the relevant Lender). Notwithstanding the foregoing, absent an Event of Default, the Administrative Agent and Lenders agree that no field exam or inspection shall be commenced under this Agreement prior to August 1, 2020. After the occurrence and during the continuance of any Event of Default, each Loan Party shall provide the Administrative Agent and each Lender with contact information relating to its suppliers. The Loan Parties acknowledge that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain Reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders. Borrowers will reimburse the Administrative Agent in cash, upon demand, for any and all reasonable fees, costs, expenses and other charges incurred by the Administrative Agent relating to the engagement of any Administrative Agent Consultant from time to time (in each case, whether or not included in the Approved Budget).

Section 5.07 Compliance with Laws. Other than violations arising as a result of the commencement of the Bankruptcy Cases and except as otherwise excused by the Bankruptcy Code and except as could not be reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, each Loan Party will, and will cause each Subsidiary to, comply with all Requirements of Law applicable to it or its property. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.08 Use of Proceeds

(a) The proceeds of the Loans and Cash Collateral (as such term is defined in the Financing Order) will be used (i) solely in accordance with and subject to the Approved Budget (subject to Permitted Variances) and the Financing Order, to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, the commencement of the Bankruptcy Cases and the transactions contemplated hereby and thereby, as and when such expenses are due and payable, (ii) to the extent not otherwise prohibited by the Loan Documents or the Final Financing Order, to fund working capital needs and general corporate purposes of Borrowers, at such times and in such amounts as are in compliance with Sections 5.21 and 6.17, (iii) to provide cash "adequate protection" (as set forth in Section 361 of the Bankruptcy Code and the relevant sections of other applicable insolvency laws) in favor of the Existing Administrative Agents and the Existing Lenders and (iv) to repay upon the entry of the Final Financing Order, in full, the Existing US Secured Obligations, including outstanding principal, accrued interest, and accrued fees and expenses owing under or in connection with the Existing Credit Agreement and other Existing Loan Documents with respect to the Existing US Secured Obligations; provided that no part of the proceeds of any Loan or Letter of Credit or Cash Collateral (as such term is defined in the Financing Order) will be used, directly or indirectly, (x) in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Existing Administrative Agents, Existing Lenders, the Administrative Agent or Lenders, or in connection with the Secured Obligations or Existing Secured Obligations, except for an amount up to the limit set forth in the Financing Order for such purpose, for investigation costs of any official statutory committee appointed pursuant to Bankruptcy Code § 1102, (y) toward repayment of the principal of Term Loan Obligations (including any "adequate protection" payments with respect thereto) or (z) for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X; provided, further, that none of the foregoing shall limit the payment of professional fees that benefit from the Carve Out, as and when allowed by the Bankruptcy Court at any time (whether by interim order, procedural order or otherwise), subject to the terms, conditions and limitations set forth in the Financing Order.

(b) No Borrower will request any Borrowing or Letter of Credit, and no Borrower shall use, and each Borrower shall procure that its Subsidiaries and its and their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto. The foregoing clauses (ii) and (iii) of this Section 5.08(b) will not apply to any party hereto to which the Blocking Regulation applies, if and to the extent that such representations are or would be unenforceable by or in respect of that party pursuant to, or would otherwise result in a breach and/or violation of, (1) any provision of the Blocking Regulation (or any law or regulation implementing the Blocking Regulation in any member state of the European Union) or (B) any similar blocking or anti-boycott law in the United Kingdom.

Section 5.09 Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (or with financially sound and reputable carriers that are acceptable to Administrative Agent) (a) insurance in such amounts (with no greater risk retention) and against such risks (including loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lenders, upon reasonable request of the Administrative Agent, a certificate evidencing the insurance so maintained.

Section 5.10 [Reserved].

Section 5.11 Appraisals. At any time that the Administrative Agent requests, each of the Borrowers will, and will cause each Subsidiary to, provide the Administrative Agent with appraisals or updates thereof of their Inventory from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent, such appraisals and updates to include, without limitation, information required by applicable law and regulations; provided, however, that if no Event of Default has occurred and is continuing, not more than one such appraisal per calendar year (excluding any appraisal conducted prior to the Effective Date) shall be at the sole expense of the Loan Parties. Notwithstanding the foregoing, absent an Event of Default, the Administrative Agent and Lenders agree that no field exam or inspection shall be commenced under this Agreement prior to August 1, 2020.

Section 5.12 Depository Banks. Each of the US Loan Parties will, other than with respect to the Term Loan Proceeds Account, any Non-Restricted Deposit Accounts or unless otherwise consented to by Administrative Agent in its sole discretion, maintain the Administrative Agent (or one of its Affiliates) as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business.

Section 5.13 Environmental Laws. Except as could not be reasonably expected, individually or in the aggregate, to result in a material loss or liability to Holdings or any of its Subsidiaries, each Loan Party will, and will cause each Subsidiary to:

(a) comply with, all applicable Environmental Laws, and obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws; and

(b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

Section 5.14 Additional Collateral; Further Assurances.

(a) [Reserved].

(b) Each US Loan Party will cause 100% of the issued and outstanding Equity Interests of each of its domestic Subsidiaries and each Foreign Subsidiary (other than Crisa Libbey, S.A. de C.V.) directly owned by the US Borrower or any domestic Subsidiary, to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the US Collateral Documents as the Administrative Agent shall reasonably request.

(c) Each Netherlands Loan Party will cause 100% of the issued and outstanding Equity Interests of (i) each of its Subsidiaries that is organized under the laws of the Netherlands and (ii) each of its direct Subsidiaries that is not organized under the laws of the Netherlands to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Netherlands Collateral Documents (or in the case of (ii) above, similar terms and conditions) as the Administrative Agent shall reasonably request.

(d) Each Mexico Loan Guarantor will, within the time frame required therefor by Section 5.23 and at all times thereafter, cause 100% of the issued and outstanding Equity Interests of (i) each of its Subsidiaries that is organized under the laws of Mexico and (ii) each of its direct Subsidiaries that is not organized under the laws of Mexico to be subject at all times to a first priority, perfected Lien (it being understood that the existence of the Netherlands Intercompany Pledge shall not be construed to cause this requirement not to be satisfied so long as the Netherlands Intercompany Pledge remains at all times subject to the Netherlands Subordination Agreement) in favor of the Administrative Agent pursuant to the terms and conditions of the Mexico Collateral Documents (or in the case of (ii) above, similar terms and conditions) as the Administrative Agent shall reasonably request.

(e) The Portugal Loan Guarantor will cause 100% of the issued and outstanding Equity Interests of (i) each of its Subsidiaries that is organized under the laws of Portugal and (ii) each of its direct Subsidiaries that is not organized under the laws of Portugal to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent pursuant to the terms and conditions of the Portugal Collateral Documents (or in the case of (ii) above, similar terms and conditions) as the Administrative Agent shall reasonably request.

(f) Without limiting the foregoing, each Loan Party will execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01 or Section 5.23, as applicable), which may be required by law or which the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents to the extent required by the Collateral Documents, all at the expense of the applicable Loan Party.

(g) If any material assets (including any real property or improvements thereto or any interest therein) are acquired by any Borrower or any Subsidiary that is a Loan Party after the Effective Date (other than assets constituting Collateral under any Collateral Document that become subject to the Lien in favor of the applicable Administrative Agent upon acquisition thereof), the Borrower Representative will notify the Administrative Agent and the Lenders thereof, and, if requested by the Administrative Agent or the Required Lenders, the US Loan Parties, the Netherlands Loan Parties, the Mexico Loan Guarantors or Portugal Loan Guarantor, as applicable, will cause such assets to be subjected to a Lien securing the Secured Obligations in accordance with and subject to the terms of the US Collateral Documents, the Netherlands Collateral Documents, the Mexico Collateral Documents or the Portugal Collateral Documents, as applicable, and will take, and cause its Subsidiaries that are Loan Parties to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (f) of this Section, all at the expense of the applicable Loan Party.

Section 5.15 USA PATRIOT Act. The Borrowers shall and shall cause the other Guarantors to promptly, following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act, (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act").

Section 5.16 Bankruptcy Transaction Milestones. Holdings will, and will cause each of its Subsidiaries to, cause the performance and delivery of the items set forth on Schedule 5.16 on or before the dates specified therein with respect to such items (the "Milestones").

Section 5.17 Investment Banker

(a) Borrowers shall continue to engage an investment banker (the "Investment Banker") pursuant to a Qualified Investment Banker Engagement and cause the Investment Banker to promptly provide the Administrative Agent and Lenders, and their respective agents, advisors, and consultants, with such reasonably requested information, drafts, and reports (including, without limitation, relating to any potential strategic alternatives or transactions) regarding the process for which the Investment Banker was engaged, and, upon reasonable prior notice to the Borrowers and the Investment Banker, schedule conference calls (with a frequency which shall not be unreasonable, provided that the Borrowers acknowledge that such calls scheduled as frequently as once per week shall not be unreasonable) with the Investment Banker and the Administrative Agent and (to the extent available) Lenders, and their respective agents, advisors, and consultants (with each such call to be scheduled at a mutually convenient time during normal business hours), regarding the process for which the Investment Banker was engaged, all as the Administrative Agent and Lenders may reasonably request from time to time. Borrowers may participate in such discussions at the times scheduled pursuant to the immediately preceding sentence, provided that any Borrower's failure to elect to do so will not prevent the Administrative Agent or any Lender (or their respective agents, advisors, or consultants) from proceeding with such discussions. Borrowers shall, as a component of any Qualified Investment Banker Engagement, cause the applicable Investment Banker to maintain an appropriate data room to which the Administrative Agent and any consultant, financial advisor or counsel engaged by Administrative Agent or its counsel at any time will have reasonable access and review rights at all times. In addition to the foregoing, the Administrative Agent, each Lender, and any consultant, financial advisor, or counsel engaged by the Administrative Agent or any Lender, or their counsel, at any and all times, will have reasonable access and review rights with respect to any data room (and the information contained therein) maintained by any Investment Banker or Borrowers with respect to any actual or contemplated sale of any of the equity interests or assets of any Borrower, any refinancing relating to the Secured Obligations, or any other process for which the Investment Banker was engaged.

(b) Except as otherwise agreed to in writing by the Administrative Agent, all fees, costs and expenses of the Investment Banker shall be solely the responsibility of Borrowers, and in no event will the Administrative Agent or any Lender have any liability or responsibility of any kind with respect to the Investment Banker (including, without limitation, as to the payment of any of the Investment Banker's fees, costs or expenses), and the Administrative Agent and Lenders will not have any obligation or liability of any kind or nature to Borrowers, the Investment Banker or any other Person by reason of any acts or omissions of the Investment Banker.

(c) No Loan Party shall amend or otherwise modify the terms of the Investment Banker's engagement with the Borrowers to the extent such modification would modify the scope of Investment Banker's engagement, increase the fees payable to Investment Banker or could otherwise reasonably be expected to be adverse to the interests of the Administrative Agent or Lenders. Unless otherwise agreed to by the Administrative Agent, in the event that any Investment Banker resigns, is suspended, or has its services modified in any manner not reasonably acceptable to the Administrative Agent or Lenders, or is terminated at any time prior to the consummation of the transaction contemplated by the applicable Qualified Investment Banker Engagement, the Borrowers shall consummate a new Qualified Investment Banker Engagement within ten (10) Business Days after the date on which such Investment Banker resigns, is suspended, or has its services modified, or is terminated.

Section 5.18 Consultant. Borrowers will continue to engage a Consultant on the terms and conditions set forth in, or consistent with, the retention order authorizing the continued engagement of the Consultant and Borrowers shall not amend or otherwise modify the terms of Consultant's engagement with the Borrowers to the extent such modification would modify the scope of Consultant's engagement, increase the fees payable to Consultant, or could otherwise reasonably be expected to be adverse to the interests of the Administrative Agent or Lenders. Debtors hereby do, and will continue to, authorize and instruct the Consultant acting through the interim management team furnished to Debtors, to (a) share with the Administrative Agent, Lenders, and their respective agents, advisors, and consultants, all budgets, records, projections, financial information, reports and other information relating to the Collateral, the financial condition, operations and prospects of Debtors and their Affiliates prepared by Consultant with respect to Debtors and their Affiliates after the Effective Date, and (b) make such persons acting as interim consultants of Debtors available for discussions with the Administrative Agent, the Lenders, and their respective agents, advisors, and consultants, as reasonably requested by the Administrative Agent and the Lenders from time to time. In the event that a CRO is engaged by the Debtors, the provisions of the preceding sentence shall also apply to the CRO as if the references to the Consultant therein were references to the CRO. Debtors will at all times reasonably cooperate with the Consultant and provide Consultant reasonable complete access to all of the Debtors' books and records, all of Debtors' premises and to Debtors' management. Notwithstanding anything to the contrary in this Section 5.18, none of Holdings or any of its Subsidiaries or Consultant will be required to disclose any such information to the extent that (i) such disclosure would in the good faith determination of Borrowers (based on the advice of counsel) violate attorney-client privilege or is otherwise prohibited by law or fiduciary duty, (ii) such information constitutes attorney work product, or (iii) such information is subject to confidentiality obligations to a third party (not entered into in contemplation thereof and for which any Borrower is using commercially reasonable efforts to lift such confidentiality restrictions) and the Administrative Agent or the Lenders (as applicable) have not executed any necessary confidentiality agreements or non-reliance letters with respect thereto. All fees and expenses of the Consultant shall be solely the responsibility of Borrowers and in no event shall the Administrative Agent or any Lender have any obligation, liability or responsibility of any kind or nature whatsoever for the payment of any such fees, expenses or other obligations, nor shall the Administrative Agent or any Lender have any obligation or liability to Borrowers, their Affiliates, or any other Person by reason of any acts or omissions whatsoever of the Consultant at any time.

Section 5.19 Bankruptcy Covenants. Notwithstanding anything in the Loan Documents to the contrary, the Loan Parties shall comply with all material covenants, terms and conditions and otherwise perform all obligations set forth in the Financing Order.

Section 5.20 Bankruptcy Cases.

(a) **Bankruptcy Cases Documents and Notices.** Each Loan Party that is a Debtor shall deliver or cause to be delivered for review and comment, as soon as commercially reasonable, all material pleadings, motions and other documents (provided that any of the foregoing relating to the Loans shall be deemed material) to be filed on behalf of the Loan Parties with the Bankruptcy Court to the Administrative Agent and its counsel. If not otherwise provided by the Bankruptcy Court's electronic docketing system, Borrowers shall provide (x) copies to the Administrative Agent of all pleadings, motions, applications, judicial information, financial information and other documents filed by or on behalf of the Loan Parties with the Bankruptcy Court, distributed by or on behalf of the Loan Parties to any Committee, filed with respect to the Bankruptcy Cases or filed with respect to any Loan Document or Existing Loan Document and (y) such other reports and information as the Administrative Agent may, from time to time, reasonably request. In connection with the Bankruptcy Cases, the Loan Parties that are Debtors shall give the proper notice for (x) the motions seeking approval of the Loan Documents and the Financing Order and (y) the hearings for the approval of the Financing Order. The Borrower and the other Loan Parties shall give, on a timely basis as specified in the Financing Order, all notices required to be given to all parties specified in the Financing Order. The Borrowers and the other Loan Parties shall use reasonable best efforts to obtain the Final Financing Order.

(b) Restructuring Proposals. Each Loan Party shall promptly deliver or cause to be delivered to the Administrative Agent and the Lenders copies of any term sheets, proposals, or presentations from any party, related to (i) the restructuring of the Loan Parties, or (ii) the sale of assets of one or all of the Loan Parties that is outside the ordinary course of business.

(c) Repayment of Indebtedness. Except to the extent permitted hereunder, under the Financing Order or under the Approved Budget, no Loan Party shall, without the express prior written consent of the Administrative Agent or pursuant to an order of the Bankruptcy Court after notice and a hearing, make any Pre-Petition Payment.

Section 5.21 Budget Compliance and Other Matters.

(a) The Loan Parties shall comply with, and the proceeds of the Loans shall be used by the Loan Parties in accordance with, the Approved Budget, subject to Permitted Variances.

(b) Borrowers hereby acknowledge and agree that any Weekly Cash Flow Forecast provided to the Administrative Agent and the Lenders pursuant to Section 5.01(g) shall not amend or supplement the applicable Approved Budget until the Administrative Agent delivers a notice (which may be delivered by electronic mail) to the Borrowers stating that the Administrative Agent has approved of such Weekly Cash Flow Forecast; provided that, if the Administrative Agent does not deliver a notice of approval to Borrowers, then the existing Approved Budget shall continue to constitute the applicable Approved Budget until such time as the subject Weekly Cash Flow Forecast delivered by Borrowers pursuant to Section 5.01(g) is agreed to among Borrowers and the Administrative Agent in accordance with this Section 5.21, but in the event that the Administrative Agent and the Borrowers cannot agree to such an updated, modified or supplemental Approved Budget, such disagreement shall give rise to an Event of Default once the full 13-week period covered by the Approved Budget has terminated. Once such Weekly Cash Flow Forecast is so approved in writing by the Administrative Agent, it shall supplement or replace the prior Approved Budget, and shall thereafter constitute the Approved Budget. For the avoidance of doubt, none of the foregoing shall limit the payment of professional fees that benefit from the Carve Out as and when allowed by the Bankruptcy Court at any time (whether by interim order, procedural order or otherwise), provided that such payment shall be subject to the terms, conditions and limitations set forth in the Financing Order.

Section 5.22 Netherlands Loan Parties.

(a) Each Netherlands Loan Party shall maintain its centre of main interests in the Netherlands for the purposes of the Insolvency Regulation.

(b) Each Netherlands Loan Party shall be a resident for tax purposes solely in the Netherlands and shall not have any permanent establishment or other taxable presence outside the Netherlands, unless with the prior written consent of the Administrative Agent.

(c) Any Netherlands Fiscal Unity of which a Netherlands Loan Party is at any time a member shall consist of Netherlands Loan Parties only, unless with the prior written consent of the Administrative Agent.

(d) If, at any time, a Netherlands Loan Party or any of its Dutch subsidiaries is part of a Netherlands Fiscal Unity and such Netherlands Fiscal Unity is, in respect of such Netherlands Loan Party or Dutch subsidiary, as applicable, terminated (*verbroken*) or disrupted (*beëindigd*) as a result of or in connection with the Administrative Agent enforcing its rights under any Netherlands Collateral Document, such Netherlands Loan Party or Dutch subsidiary, as applicable, shall, at the request of the Administrative Agent, together with the parent (*moedermaatschappij*) or deemed parent (*aangewezen moedermaatschappij*) of the Netherlands Fiscal Unity, for no consideration and as soon as reasonably practicable, lodge a request with the Dutch Tax Authority to allocate and hand over any tax losses (as referred to in Article 20 of the Dutch Corporate Income Tax Act) to the Netherlands Loan Party or Dutch subsidiary, as applicable, leaving the Netherlands Fiscal Unity (within the meaning of Article 15af of the Dutch Corporate Income Tax Act), to the extent such tax losses are attributable (*toerekenbaar*) to the Netherlands Loan Party or Dutch subsidiary, as applicable, leaving the Netherlands Fiscal Unity.

Section 5.23 Post-Closing Deliveries. The obligation of the Lenders to continue to make Loans (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 5.23 to this Agreement (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof (unless such date is extended, in writing by the Administrative Agent in Administrative Agent's sole discretion) shall constitute an Event of Default hereunder).

Section 5.24 Term Loan Documents. The Loan Parties shall keep and maintain the Term Loan Documents in full force and effect and use the proceeds of advances and other extensions of credit thereunder solely for purposes and in amounts set forth in the Approved Budget (subject to Permitted Variances) and as permitted by the Term Loan Documents, this Agreement and the other Loan Documents and the Financing Orders.

ARTICLE VI

Negative Covenants

Until the Commitments have expired or terminated and the payment in full of the Secured Obligations and the Existing Secured Obligations, the Loan Parties covenant and agree, jointly and severally, with the Lenders that:

Section 6.01 Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur or suffer to exist any Indebtedness, except:

(a) the Secured Obligations;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and modifications (other than modifications that shorten or accelerate the maturity of such Indebtedness or require any cash payments earlier than what is already required in respect of such Indebtedness), extensions, renewals and replacements of any such Indebtedness from time to time; provided that (i) the parties thereto shall remain the same and (ii) the aggregate amount of such Indebtedness thereunder does not increase;

(c) Indebtedness constituting loans or advances made to (i) US Borrower or any of its Wholly-Owned Subsidiaries that are US Loan Parties from (A) US Borrower or any US Subsidiary of US Borrower (provided that all of any portion of such loans or advances may be restricted by the Administrative Agent during a US Separate Borrowing Base Period to the extent that the aggregate outstanding amount of such loan or advances to any US Loan Party exceeded the amount of the US Borrowing Base attributable to Eligible Accounts and Eligible Inventory of such US Loan Party) or (B) any Netherlands Loan Party, (ii) a Netherlands Loan Party from any other Netherlands Loan Party, (iii) an Other Foreign Guarantor from any other Foreign Guarantor, (iv) any Subsidiary of Holdings that is a Loan Party from any other Subsidiary of Holdings that is not a Loan Party and (v) any Subsidiary of Holdings that is not a Loan Party from any other Subsidiary of Holdings that is not a Loan Party; provided that any Indebtedness permitted under this clause (c) of any Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent and any such loans and advances made by a Loan Party shall be evidenced by a promissory note pledged pursuant to the US Security Agreement or, in the case of a Netherlands Loan Party, any such loans and advances made are pledged pursuant to the relevant Netherlands Security Agreement;

(d) Guarantees (other than with respect to the Term Loan Obligations) in the ordinary course of business of Indebtedness or other obligations of (i) US Borrower or any of its Wholly-Owned Subsidiaries that are US Loan Parties by Holdings, any other US Loan Party or any Netherlands Loan Party, (ii) a Netherlands Loan Party by any other Netherlands Loan Party, (iii) any Subsidiary of Holdings that is a Loan Party by any other Subsidiary of Holdings that is not a Loan Party and (iv) any Subsidiary of Holdings that is not a Loan Party by any other Subsidiary of Holdings that is not a Loan Party; provided that (A) any Guarantees permitted under this clause (d) by any Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent to the extent that the Indebtedness or other obligations that are Guaranteed are subordinated to the Secured Obligations and (B) any Indebtedness so Guaranteed must be permitted by this Section 6.01;

(e) Indebtedness under the Netherlands Intercompany Note as in effect on the date hereof (plus any increases to the principal amount of Indebtedness owing thereunder for capitalized interest in accordance with the terms thereof), and in all respects subject to the Netherlands Subordination Agreement;

(f) [reserved];

(g) Indebtedness of any Loan Party or any Subsidiary in respect of workers' compensation claims, self-insurance obligations, letters of credit, performance, surety and similar bonds, warranties, indemnities and completion guarantees provided by any Loan Party or any Subsidiary in the ordinary course of business and in each case consistent with the Approved Budget;

(h) [reserved];

(i) [reserved];

(j) [reserved];

(k) Indebtedness of US Borrower in respect of the Term Loan Obligations (other than the Existing Term Loan Obligations, which shall be subject to clause (m) below and may not be guaranteed by any Loan Parties other than the US Loan Parties) (and any related Guarantees by the Loan Parties, so long as such Loan Parties Guarantee all of the Secured Obligations) in an aggregate principal amount not exceeding at any one time outstanding an amount equal to (x) \$60,000,000 of new money loans, plus (y) up to \$60,000,000 of Loans under the Existing Term Loan Agreement that are rolled up into "Roll-Up Loans" under the Term Loan Agreement pursuant to Section 2.01(b) of the Term Loan Agreement as in effect on the Effective Date (provided, that, absent the prior written consent of the Administrative Agent, not more than \$30,000,000 of new money Term Loan Obligations (and not more than an equal amount of Term Loan Obligations constituting Roll-Up Loans) shall be permitted to be incurred prior to the entry of the Final Financing Order, plus (z) any interest paid in kind under the Term Loan Agreement as in effect on the Effective Date that increases the aggregate principal amount outstanding thereunder in accordance with the terms thereof,

(l) Existing Secured Obligations, including any Indebtedness reinstated by the Bankruptcy Court and constituting Reinstated Existing Secured Obligations;

(m) Indebtedness outstanding under the Existing Term Loan Documents as of the Effective Date in accordance with the Financing Order (provided that no Subsidiary of Holdings other than a Debtor may guarantee or otherwise become liable in respect of such Indebtedness), less the amount of such Indebtedness that becomes rolled up into Term Loan Obligations as described in clause (k)(y) above;

(n) [reserved];

(o) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, provided, however, that such Indebtedness is extinguished within five (5) Business Days of incurrence;

(p) [reserved];

(q) [reserved];

(r) Indebtedness of Holdings permitted by Section 6.04(q); and

(s) with due observance of Section 5.22(c), any joint and several liability among the Netherlands Loan Parties as a result of any Netherlands Fiscal Unity;

Notwithstanding the foregoing, in no event will any Loan Party, or will any Loan Party permit any Subsidiary to, create, incur or suffer to exist any Indebtedness or other obligations (other than the Secured Obligations) that is designated as an "ABL Loan Agreement".

Section 6.02 Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document securing the Secured Obligations;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of any Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of such Borrower or Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof;

(d) [reserved];

(e) Liens on the Equity Interests of Crisa Libbey México, S. de R.L. de C.V. granted by Libbey Mexico in favor of Libbey Mexico Holdings B.V. in accordance with the terms of the Netherlands Intercompany Pledge as in effect on the date hereof, and subject in all respects to the Netherlands Subordination Agreement;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(g) [reserved];

(h) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(i) [reserved];

(j) Liens on assets of Holdings and the US Borrower (and on the assets of the other Loan Parties, so long as such other Loan Parties have Guaranteed all of the Secured Obligations and have granted Liens on all of such assets to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, to secure all of the Secured Obligations) securing the Term Loan Obligations (provided, however, that Liens on the assets of Loan Parties that are not US Loan Parties may not secure the Existing Term Loan Obligations) permitted by Section 6.01(k) and (m), as applicable, in each case to the extent such Liens are subject to the Intercreditor Agreement; provided that the Administrative Agent has a first priority Lien (or second or third priority Lien, junior only to the Lien of the holders of such Term Loan Obligations, with respect to the Term Priority Collateral to the extent provided in the Intercreditor Agreement) on such assets (other than the Term Loan Proceeds Account which shall not serve as Collateral for the Secured Obligations or the Existing Secured Obligations) pursuant to the Collateral Documents (except as expressly permitted in this clause (j), the Term Loan Obligations shall not be secured by any Lien on any asset of any Loan Party or any of its Subsidiaries);

(k) [reserved];

(l) Liens granted or authorized by the Financing Order, including, without limitation, replacement Liens granted to the Existing Administrative Agents;

(m) Liens granted to, or for the benefit, of the Administrative Agent or the Existing Administrative Agents to secure the Existing Secured Obligations.

Section 6.03 Fundamental Changes.

(a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person (including by way of Division), or permit any other Person to merge into or consolidate with it, or liquidate or dissolve.

(b) No Loan Party will, nor will it permit any of its Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrowers and their Subsidiaries on the date of execution of this Agreement and businesses reasonably related thereto and reasonable extensions thereof.

(c) Holdings will not engage in any business or activity other than the ownership of all the outstanding shares of capital stock of the Borrowers, Subsidiaries of the Borrowers and activities incidental thereto, including, without limitation, employee stock options and responsibilities of a public company. Holdings will not own or acquire any assets (other than Equity Interests of the Borrowers) or incur any liabilities (other than liabilities under the Loan Documents, the Existing Loan Documents, the Term Loan Agreement or the Existing Term Loan Agreement and liabilities reasonably incurred in connection with its maintenance of its existence and Guarantees and other Indebtedness permitted under Section 6.01).

(d) Other than as disclosed in the Hong Kong Share Mortgage, Libbey Asia Limited will not engage in any business or activity other than the ownership of all the outstanding shares of capital stock of Libbey Trading (Beijing) Co., Ltd. and Libbey Glassware (China) Co., Ltd., and will not own or acquire any assets (other than Equity Interests Libbey Trading (Beijing) Co., Ltd. and Libbey Glassware (China) Co., Ltd.) or incur any liabilities.

(e) Crisa Libbey, S.A. de C.V. will not engage in any business activity and will not own or acquire any assets or incur any liabilities (other than any de minimis assets or liabilities relating to the maintenance of its existence).

(f) No Loan Party will, nor will it permit any Subsidiary to, form any new Subsidiary without the Administrative Agent's prior written consent; provided, that, to the extent the Administrative Agent consents to the formation of any new Subsidiary, such new Subsidiary, if so requested by the Administrative Agent, shall guaranty all of the Secured Obligations and any Existing Secured Obligations and grant Liens on substantially all of its assets to secure the Secured Obligations and any Existing Secured Obligations pursuant to documentation in form and substance acceptable to the Administrative Agent; provided, however, such new Subsidiary shall not be required to provide such guaranty or grant if such guaranty or grant could give rise to a material adverse tax consequence as determined by the Administrative Agent in its sole discretion.

For the avoidance of doubt, notwithstanding anything to the contrary set forth in this Section 6.03 to the contrary, any US Loan Party or any domestic Subsidiary of Holdings may convert from a corporation to a limited liability company so long as (1) the Administrative Agent is given ten (10) days prior written notice thereof (or such shorter amount of time as agreed to by the Administrative Agent in its sole discretion), (2) all filings reasonably requested to be made by the Administrative Agent or Required Lenders to maintain the perfection of the Administrative Agent's Liens on such converting entity's assets are made and completed, (iii) such conversion or other similar transaction does not give rise to any material Tax liability of any Loan Party and (iv) any and all new operating agreements and other organizational or governing documents of such converting entity are in form and substance satisfactory to the Administrative Agent.

Section 6.04 Investments, Loans, Advances, Guarantees and Acquisitions. No Loan Party will, nor will it permit any Subsidiary to, purchase, hold or acquire any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

(a) Permitted Investments which, unless held in Non-Restricted Deposit Accounts, are subject to control agreements in favor of the Administrative Agent for the benefit of the Lenders or otherwise subject to a perfected security interest in favor of the Administrative Agent for the benefit of the Lenders, and made in the ordinary course of business to the extent set forth in the Approved Budget;

(b) Investments in existence on the date of this Agreement and described in Schedule 6.04 and any modification, replacement, renewal or extension thereof from time to time; *provided* that (i) the parties thereto shall remain the same and (ii) the aggregate amount of such Investments thereunder does not increase; *provided further*, that there shall not be any additions thereto (including any capital contributions) made after the date hereof;

(c) investments in Equity Interests of (i) the US Borrower by Holdings, (ii) the US Borrower or any of its Wholly-Owned Subsidiaries that are US Loan Parties by US Borrower or any other US Loan Party, (iii) the Netherlands Borrower or any of its Wholly-Owned Subsidiaries that are Netherlands Loan Parties by Netherlands Borrower or any other Netherlands Loan Party, (iv) any Other Foreign Guarantor by any Other Foreign Guarantor, or (v) any Subsidiary that is not a Loan Party by any other Subsidiary that is not a Loan Party, *provided* that any such Equity Interests held by a Loan Party shall be pledged pursuant to the respective Security Agreement;

(d) loans or advances by Holdings or a Borrower to any Subsidiary and made by any Subsidiary to any Borrower or any other Subsidiary to the extent that such loan or advance is expressly permitted by Section 6.01(c);

(e) Guarantees expressly permitted by Section 6.01;

(f) loans or advances made by a Loan Party to its employees in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes to the extent set forth in the Approved Budget;

(g) subject to Sections 4.2(a) and 4.4 of the US Security Agreement, notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements prior to the Effective Date with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(h) [reserved];

(i) [reserved];

(j) Investments received in connection with the dispositions of assets permitted by Section 6.05;

(k) Investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances;"

(l) [reserved];

(m) [reserved];

(n) [reserved];

(o) [reserved];

- (p) Investments consisting of licensing of intellectual property pursuant to joint marketing arrangements in effect as of the Effective Date with other Persons;
- (q) Restricted Payments solely to the extent permitted by Section 6.08 hereof; and
- (r) with due observance of Section 5.22(c), any joint and several liability among the Netherlands Loan Parties as a result of any Netherlands Fiscal Unity;

Section 6.05 Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, sell, transfer, lease or otherwise dispose of any asset, including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in accordance with Section 6.04(c)), except:

- (a) sales, transfers and dispositions of (i) inventory in the ordinary course of business and (ii) used, obsolete, worn out or surplus equipment or property in the ordinary course of business;
- (b) the transfer of certain of the Mexico Collateral to the Mexico Security Trustee pursuant to the Mexico Security Trust Agreement;
- (c) sales, transfers and dispositions solely among (i) the US Borrower and any other US Loan Party, (ii) the Netherlands Borrower and any other Netherlands Loan Party, (iii) any Other Foreign Guarantor and any Other Foreign Guarantor and (iv) any Subsidiaries of the Borrowers that are not Loan Parties;
- (d) sales, transfers and dispositions of investments permitted by clause (k) of Section 6.04;
- (e) sales, transfers and dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business with a value not in excess of \$250,000 in the aggregate;
- (f) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary;
- (g) Restricted Payments solely to the extent permitted by Section 6.08 hereof;
- (h) sales of goods or services between Loan Parties so long as any such transactions between such Loan Parties are entered into in the ordinary course of business consistent with past practice on a cost plus basis subject to periodic true-up (but, in any event, on pricing terms that are not greater than those in existence on the Effective Date);
- (i) [reserved];
- (j) non-exclusive licensing or sublicensing of Intellectual Property in the ordinary course of business, provided that no such license or sublicense may be granted that would reasonably be expected to constitute an abandonment of any Loan Party's or any Subsidiary's trade name or trademarks or other similar Intellectual Property if such abandonment would materially interfere with the business of Holdings and its Subsidiaries; and

(k) leases, subleases or other similar arrangements for use by third parties in the ordinary course of business that does not materially interfere with the conduct of the business of Holdings or its Subsidiaries;

provided that all sales, transfers, leases and other dispositions permitted by clauses (d), (j) and (k) shall be made for fair value and for at least 75% cash consideration.

Section 6.06 Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred.

Section 6.07 Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except such Swap Agreements as may be consented to by the Administrative Agent in its sole discretion.

Section 6.08 Restricted Payments: Certain Payments of Indebtedness.

(a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(i) Restricted Payments (1) to any US Loan Party from any Wholly-Owned Subsidiary of Holdings, (2) to any Netherlands Loan Party from any Wholly-Owned non-domestic Subsidiary of Holdings, (3) to any Other Foreign Guarantor from any Other Foreign Guarantor or any Wholly-Owned Subsidiary of Holdings that is not a Loan Party or (4) to any Subsidiary that is not a Loan Party from any other Subsidiary that is not a Loan Party; and

(ii) Restricted Payments to Holdings for the purpose of (1) paying any federal, state or local income Taxes imposed on it under applicable law and to the extent that such Taxes are directly attributable to the income of the US Borrower and its Subsidiaries, (2) paying franchise Taxes and other fees to maintain its legal existence or (3) paying corporate overhead expenses of Holdings and to pay salaries or other compensation of employees who perform services for both Holdings and the US Borrower, in each case, incurred in the ordinary course of business.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Subordinated Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Subordinated Indebtedness.

Section 6.09 Transactions with Affiliates. No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) existing transactions entered into prior to the Effective Date and any payments made pursuant thereto to the extent permitted hereunder and made in accordance with the Approved Budget, (b) solely to the extent such transactions are expressly permitted under this Agreement, transactions between or among any Borrower and any Subsidiary that is a Loan Party not involving any other Affiliate, (c) any investment permitted by Section 6.04(b), (c), (d) or (e), (d) any Indebtedness permitted under Section 6.01(b), (c) or (d), (e) any Restricted Payment solely to the extent permitted under Section 6.08, (f) any asset sale permitted by Section 6.05(h), (g) the payment of reasonable fees to directors of any Borrower or any Subsidiary of Holdings who are not employees of such Borrower or Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrowers or any Subsidiary of Holdings in the ordinary course of business, in each case, in accordance with the Approved Budget, (h) transactions between or among Subsidiaries that are not Loan Parties, provided that, such transactions are in the ordinary course of business and are at prices and on terms and conditions not less favorable to such Subsidiaries than could be obtained on an arm's length basis from unrelated third parties, and (i) sales, transfers and dispositions solely to the extent permitted under Section 6.05(c).

Section 6.10 Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to any Borrower or any other Subsidiary or to Guarantee Indebtedness of any Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document, the "Loan Documents" (as such term is defined in the Term Loan Agreement and Existing Term Loan Agreement) and the "Loan Documents" (as defined in the Existing Credit Agreement), (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but shall apply to any extension, renewal, amendment or modification of any such restriction or condition to the extent such extension, renewal, amendment or modification expands the scope of such restriction or condition), (iii) [reserved], (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof and (vi) the foregoing shall not apply to any restrictions or conditions imposed by any agreement relating to Indebtedness permitted by Section 6.01(k), or, to the extent such restrictions relate only to Subsidiaries that are not Loan Parties, Section 6.01(q) hereof.

Section 6.11 Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify or waive (a) any of its rights under any agreement relating to any Subordinated Indebtedness, or (b) its certificate of incorporation, by-laws, operating, management or partnership agreement or other organizational documents to the extent any such amendment, modification or waiver would be materially adverse to the Lenders. For the avoidance of doubt, notwithstanding anything to the contrary in this Section 6.11, any adoption of a limited liability company agreement relating to a conversion of a corporation to a limited liability company to the extent such conversion is permitted under Section 6.03, shall not be considered materially adverse to the extent such limited liability company agreement is approved by the Administrative Agent in writing in its reasonable discretion.

Section 6.12 Payments and Modifications of Certain Debt Instruments. Notwithstanding Sections 6.08(b) and 6.11, no Loan Party will (a) make any optional or voluntary payment, prepayment, repurchase or redemption of or otherwise optionally or voluntarily defease or segregate funds with respect to any Indebtedness, including, without limitation, the Term Loan Obligations or take any action to effect any of the foregoing or (b) amend, modify, waive or otherwise change, or agree to any amendment, modification, waiver or other change to, any of the terms of the Term Loan Agreement or the Existing Term Loan Agreement or other material agreement relating thereto that would (1) increase the maximum principal amount of the Term Loan Obligations (except as expressly permitted by clause (k) of Section 6.01, including the roll-up of loans under the Existing Term Loan Agreement into Loans under the Term Loan Agreement as provided in such clause (k) of Section 6.01), (2) increase the rate of interest (excluding any additional rate of interest provided for in the Term Loan Agreement upon and during the continuance of an event of default up to 200 basis points) or fees on any of the Term Loan Obligations by more than 300 basis points, (3) shorten the maturity date of any Term Loan Obligations or change to an earlier date the dates on which payments or principal or interest in such Indebtedness are due, (4) change any redemption or prepayment provisions of the Term Loan Obligations (including, without limitation, the insertion of any required prepayments or covenants to prepay the Term Loan Obligations with the proceeds of ABL Priority Collateral), other than any deferrals or extensions of payments, or (5) change or amend any other term of the Term Loan Agreement or Existing Term Loan Agreement in a manner that makes it adverse to, or more restrictive upon, the Loan Parties or add any event or default, any covenant or other restrictive provision with respect to the Term Loan Obligations (as in effect on the date hereof), except to the extent such changes, additions or restrictions mirror any change, addition or restriction made to the Loan Documents following the date hereof.

Section 6.13 Changes in Fiscal Periods. Neither Holdings nor any other Loan Party will, nor will it permit any Subsidiary to, permit its fiscal year to end on a day other than the last calendar day of each December or change its method of determining fiscal quarters.

Section 6.14 Financing Order; Administrative Expense Priority; Payments. Holdings will not, and will not permit any of its Subsidiaries to:

(a) seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Financing Order, except for modifications and amendments joined in or agreed to in writing by the Administrative Agent in its sole discretion,

(b) seek the use of "Cash Collateral" (as defined in the Financing Order) in a manner inconsistent with the terms of the Financing Order without the prior written consent of the Administrative Agent,

(c) suffer to exist at any time a priority for any administrative expense or unsecured claim against any Loan Party (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in Sections 105, 326, 328, 365, 503((b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code) or any other superpriority claim which is equal or superior to the priority of the Administrative Agent and Lenders or the Existing Administrative Agents or Existing Lenders in respect of the Secured Obligations or Existing Secured Obligations, except for the Carve Out to the extent set forth in the Financing Order and as otherwise set forth in the Loan Documents and reasonably acceptable to Administrative Agent,

(d) directly or indirectly seek, consent or suffer to exist at any time any Lien with priority over the Liens created by the Loan Documents or the Existing Loan Documents on any properties, assets or rights except (x) for the Carve Out, to the extent set forth in the Financing Order, and Permitted Priority Liens and (y) solely with respect to the Term Priority Collateral, to the extent set forth in the Financing Order and the Intercreditor Agreement, in respect of the Term Loan Obligations, and

(e) prior to the date on which the Secured Obligations and Existing Secured Obligations have been paid in full, pay any administrative expenses, except administrative expenses incurred in the ordinary course of the business of the Loan Parties and in amounts substantially consistent with (and in no event, in excess of what is permitted by the Permitted Variance) the Approved Budget, subject to and in accordance with the Financing Order; provided, however notwithstanding the foregoing, the Loan Parties shall be permitted to pay as the same may become due and payable (i) to the extent substantially consistent with the Approved Budget (and in no event, in excess of what is permitted by the Permitted Variance), administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code incurred in the ordinary course of business and to the extent otherwise authorized under the Financing Order and this Agreement and (ii) compensation and reimbursement of expenses to professionals allowed and payable under Sections 330 and 331 of the Bankruptcy Code to the extent permitted by the Financing Order.

Section 6.15 Term Loan Proceeds Account. Holdings will not, and will not permit any of its Subsidiaries to deposit funds in the Term Loan Proceeds Account unless such funds are direct proceeds of loans under the Term Loan Agreement funded on or after the Effective Date.

Section 6.16 Chapter 11 and other Claims. Except for the Carve Out and Permitted Priority Liens and as provided in the Financing Order, Holdings will not, and will not permit any of its Subsidiaries to, directly or indirectly, incur, create, assume, suffer to exist or permit any administrative expense claim or Lien that is pari passu with or senior to the claims or DIP Liens as the case may be, of the Administrative Agent and the Lenders against the Loan Parties hereunder or under the Financing Order, the Prepetition Adequate Protection Liens, the Superpriority Claims or the Liens securing the Existing Secured Obligations, or apply to the Bankruptcy Court for authority to do so. Holdings will not, and will not permit any of its Subsidiaries to, directly or indirectly, (a) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment of any Financing Order except for any modifications and amendments agreed to in writing by the Administrative Agent, in its sole discretion, or (b) apply to the Bankruptcy Court for authority to take any action prohibited by this Article 6 (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of the Administrative Agent, in its sole discretion).

Section 6.17 Budget Variance. As of any Testing Date, for the immediately preceding Testing Period, Holdings and its Subsidiaries shall not allow any variances to exist from the Approved Budget with respect to the items being tested on such Testing Date, except for any Permitted Variances.

Section 6.18 Minimum Aggregate Availability. Borrowers shall not fail to maintain, at all times, Aggregate Availability of at least \$10,000,000 (such amount, "Minimum Aggregate Availability").

ARTICLE VII

Events of Default

If any of the following events ("Events of Default") shall occur:

(a) any Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been materially incorrect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in (i) Section 5.01, 5.02(a) and (f), 5.03 (with respect to a Loan Party's existence), 5.06, 5.08, 5.12, 5.14, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23 and 5.24 or in Article VI of this Agreement or (ii) Section 4.1(d), (e), 4.6(b) or 4.15 of the US Security Agreement;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document (other than those which constitute a default under another Section of this Article), and such failure shall continue unremedied for a period of (i) 10 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of (A) Section 5.02 (other than Section 5.02(a) and (f)), 5.09, or 5.12 of this Agreement or (B) Section 4.1(a) or 4.12 of the US Security Agreement or (ii) 30 days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement or any other Loan Document;

(f) if, first arising after the Filing Date, there is (a) an "Event of Default" (as defined in the Term Loan Agreement), (b) an "Event of Default" (as defined in the Existing Credit Agreement), including, without limitation, as a result of Borrowers failing to pay all or any portion of the Existing Secured Obligations as when due and payable in accordance with the Financing Order, (c) an "Event of Default" (as defined in the Existing Term Loan Agreement), (d) a default (after the expiration of any grace periods applicable thereto) in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Material Indebtedness, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder where payment and enforcement thereof is not subject to a stay of proceedings in the Bankruptcy Court (provided that, if such default has been cured, waived or otherwise no longer in existence, the Event of Default resulting from this clause (d) shall be deemed to be cured, waived and no longer in existence), in each case, other than (i) any default arising prior to the Filing Date, (ii) due to Borrowers' filing, commencement and continuation of the Bankruptcy Cases and any litigation arising therefrom, (iii) due to restrictions on payments arising as a result of the Bankruptcy Cases or (iv) except with respect to the Term Loan Agreement, where payment or enforcement, acceleration or termination thereof by the holders of such obligations is and remains subject to a stay of proceedings in the Bankruptcy Case;

(g) [reserved];

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party that is not a Debtor or any Subsidiary of any Loan Party that is not a Debtor of its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party that is not a Debtor or any Subsidiary of any Loan Party that is not a Debtor or for a substantial part of its assets, and in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party that is not a Debtor or any Subsidiary of any Loan Party that is not a Debtor shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Subsidiary of any Loan Party or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party that is not a Debtor or any Subsidiary of a Loan Party that is not a Debtor shall admit in writing its inability to pay its debts as they become due, which, for the avoidance of doubt, shall not include the first extraordinary three-month payment extension request that has been filed by any Netherlands Loan Party in accordance with the decree of the Dutch State Secretary of Finance on 22 April 2020 (nr. 2020-8499) and any additional extensions requested by any Netherlands Loan Party in accordance with the decree of the Dutch State Secretary of Finance of 6 May 2020 (nr. 2020-9594) or any further update or amendment of this decree, provided that each such request for additional extension has been agreed to by the Administrative Agent in writing in advance;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$500,000 shall be rendered against any Loan Party, any Subsidiary of any Loan Party or any combination thereof to the extent not covered by insurance or indemnity for which the insurance company or indemnitor has not disputed coverage and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or any Subsidiary of any Loan Party with a value in excess of \$500,000 to enforce any such judgment or any Loan Party or any Subsidiary of any Loan Party shall fail within 30 days to discharge one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect, or any or any excise Tax, fine, penalty or damage with respect to a breach of a fiduciary duty is imposed on any Loan Party with respect to an Employee Benefit Plan that could reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur;

(n) the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken by a Loan Party to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Loan Guarantor shall deny in writing that it has any further liability under the Loan Guaranty to which it is a party, or shall give written notice to such effect;

(o) any Collateral Document shall for any reason fail to create a valid and perfected first priority security interest in any Collateral (or second or third priority security interest, subject in priority only to the security interests securing the Term Loan Obligations permitted hereunder, with respect to the Term Priority Collateral to the extent provided in the Intercreditor Agreement) purported to be covered thereby, except as permitted by the terms of any Collateral Document, or any Collateral Document shall fail to remain in full force or effect or any action shall be taken by a Loan Party to discontinue or to assert the invalidity or unenforceability of any Collateral Document;

(p) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

(q) a CRO shall be engaged by the Debtors that is not acceptable to Administrative Agent or is not engaged pursuant to an engagement agreement acceptable to Administrative Agent, or any such engagement agreement shall be modified once entered into absent the prior written consent of Administrative Agent in its reasonable discretion;

(r) there shall have occurred after the Effective Date any of the following:

(i) [reserved];

(ii) the Interim Financing Order or the Final Financing Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified by the Bankruptcy Court without the express prior written consent of the Administrative Agent (such consent to be given in its sole discretion);

(iii) any Debtor shall file a pleading seeking to modify or otherwise alter the Interim Financing Order, the Final Financing Order, any Loan Document, any Existing Loan Document or any of the transactions contemplated in any of the foregoing without the prior consent of the Administrative Agent, such consent to be given in its sole discretion;

(iv) without the written consent of the Administrative Agent, an order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court (a) appointing a trustee under Section 1104 of the Bankruptcy Code, or an examiner with enlarged powers relating to the operation of the business of the Loan Parties under Section 1106(b) of the Bankruptcy Code, which appointment shall not have been reversed, stayed or vacated within three days, or (b) terminating or shortening any Debtor's exclusive rights to file and solicit acceptances a Plan of Reorganization in the Bankruptcy Cases;

(v) (a) any Loan Party shall attempt to invalidate, reduce or otherwise impair the liens or security interests of the Administrative Agent and the Lenders or the Existing Administrative Agents or the Existing Lenders, or otherwise in respect of the Secured Obligations or Existing Secured Obligations, claims or rights against Loan Parties or any of their Subsidiaries or to subject any Collateral to assessment pursuant to Section 105, 506(c), 552 or any other section of the Bankruptcy Code or other applicable insolvency laws, (b) any lien, security interest or Superpriority Claim created by the Loan Documents or the Financing Order shall, for any reason, cease to be valid, (c) any action is commenced by any Loan Party or any of its Subsidiaries which contests the extent, validity, perfection, enforceability or priority of any of the liens and security interests of the Administrative Agent, the Existing Administrative Agents, the Lenders or Existing Lenders or in respect of the Existing Secured Obligations or the Secured Obligations created by the Loan Documents, the Existing Credit Agreement, the Existing Loan Documents or the Financing Order or (d) any Loan Party or any Subsidiary of any Loan Party challenges the extent, validity or priority of the Secured Obligations or the Existing Secured Obligations or the application of any payments or collections received by the Administrative Agent, Lenders, the Existing Administrative Agents, or Existing Lenders to the Secured Obligations or Existing Secured Obligations as provided for herein or in the Financing Order;

(vi) without the written consent of the Administrative Agent, (a) an order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court dismissing any of the Bankruptcy Cases or converting any of the Bankruptcy Cases (or any case comprising part of any of the Bankruptcy Cases) to a case under chapter 7 of the Bankruptcy Code or the applicable provisions of other insolvency laws, which dismissal or conversion shall not have been reversed, stayed or vacated within 3 days, (b) or the Loan Parties shall seek or request the entry of any order to effect any of the events described in subclause (a) and (b) of this paragraph (vi);

(vii) an order with respect to any of the Bankruptcy Cases shall be entered without the express prior written consent of the Administrative Agent, (a) to revoke, vacate, reverse, stay, modify, supplement or amend the Existing Credit Agreement, any Loan Document, any Existing Loan Document, the Financing Order or the transactions contemplated in any of the foregoing, or (b) to permit any administrative expense, claim or lien (now existing or hereafter arising, of any kind or nature whatsoever) to have priority equal or superior to the priority of the Administrative Agent, the Existing Administrative Agents, Lenders and Existing Lenders in respect of the Secured Obligations and Existing Secured Obligations (other than the Carve Out and Permitted Priority Liens to the extent and subject to the terms set forth in the Financing Order);

(viii) an order shall be entered by the Bankruptcy Court granting relief from the automatic stay in connection with the Bankruptcy Cases to any party that affects the Loan Parties' property (including, without limitation, to permit foreclosure or enforcement on the Collateral) with a fair market value in excess of \$500,000 without the written consent of the Administrative Agent;

(ix) any plan of reorganization is filed by the Debtors or the lenders under the Term Loan Agreement or the Existing Term Loan Agreement (or any of their Affiliates) that, or an order shall be entered by the Bankruptcy Court confirming a reorganization plan in any of the Bankruptcy Cases which, does not (a) contain a provision that all Secured Obligations and all Existing Secured Obligations shall be paid in full in a manner satisfactory to the Administrative Agent on or before the effective date, or substantial consummation, of such plan and (b) provide for the continuation of the liens and security interests granted to the Administrative Agent and the Existing Administrative Agents and priorities until such plan effective date all Secured Obligations and Existing Secured Obligations are paid in full;

(x) unless otherwise agreed to by the Administrative Agent, other than with respect to the Term Loan Obligations, a motion shall be filed by any Loan Party seeking authority, or an order shall be entered in any of the Bankruptcy Cases, that (a) permits any Loan Party or any Subsidiary of any Loan Party to incur indebtedness secured by any claim under Bankruptcy Code Section 364(c)(1) or any corresponding provision under other applicable insolvency laws or by a Lien pari passu with or superior to the lien granted under the Loan Documents and the Existing Loan Documents and Bankruptcy Code Section 364(c)(2) (or any corresponding provision under other applicable insolvency laws) or Bankruptcy Code Section 364(d) unless (1) all of the Secured Obligations and Existing Secured Obligations have been paid in full at the time of the entry of any such order, or (2) the Secured Obligations and the Existing Secured Obligations are paid in full with such indebtedness, or (b) permits any Loan Party or any Subsidiary of any Loan Party the right to use Cash Collateral (as such term is defined in the Financing Order) other than in accordance with the terms of the Financing Order, unless all of the Secured Obligations and Existing Secured Obligations shall have been paid in full;

(xi) subject to the Intercreditor Agreement, any motions in the Bankruptcy Cases to sell Collateral (other than Term Priority Collateral) having a value in excess of \$100,000 and not otherwise permitted under Section 6.04 hereof or approve procedures regarding the same, or any orders of the Bankruptcy Court approving or amending any of the foregoing, are not in form and substance reasonably acceptable to the Administrative Agent;

(xii) any Loan Party or any Subsidiary of any Loan Party shall fail to maintain sufficient projected borrowing capacity under this Agreement plus cash plus projected cash flow plus undrawn commitments under the Term Loan Agreement plus proceeds of loans under the Term Loan Agreement that have not been withdrawn from the Term Loan Proceeds Account to pay all accrued administrative obligations and other administrative claims when due, and sufficient additional borrowing capacity to enable such other unpaid administrative obligations and administrative claims that are required to be paid in full prior to such time that all Secured Obligations and Existing Secured Obligations are paid in full;

(xiii) subject to any cure or notice periods provided in the Financing Order, the failure by the Loan Parties to deliver to the Administrative Agent any of the documents or other written information required to be delivered pursuant to the Financing Order when due or any such documents or other written information shall contain any misrepresentations when made so as to make the written information provided to the Administrative Agent and Lenders, taken as a whole, misleading;

(xiv) subject to any cure or notice periods provided in the Financing Order, the failure by the Loan Parties to observe or perform any of the terms or provisions contained in the Financing Order;

(xv) the entry of an order of the Bankruptcy Court granting any lien on or security interest in any of the Collateral that is pari passu with or senior to the DIP Liens held by the Administrative Agent on or as security interests in the Collateral, the Prepetition Adequate Protection Liens, the Superpriority Claims or the Liens securing the Existing Secured Obligations, or the Loan Parties and any of their Subsidiaries shall seek or request (or support another party in the filing of) the entry of any such order, other than with respect to the Term Loan Obligations and in such case with respect to the Term Priority Collateral (in each case other than the Carve Out and Permitted Priority Liens to the extent and subject to the terms set forth in the Financing Order);

(xvi) the Loan Parties' creating or permitting to exist any other superpriority claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders, the Superpriority Claims and the Prepetition Adequate Protection Claims (as defined in the Financing Order), except for the Carve Out and the DIP Term Loan Superpriority Claim (as defined in the Financing Order);

(xvii) Holdings or any of its Subsidiaries using the proceeds of the Loans for any item other than in compliance with Sections 5.21 and 6.17, other than the Carve Out, or makes any Pre-Petition Payment, in each case except as agreed in writing in advance by the Administrative Agent;

(xviii) any uninsured judgments are entered with respect to any post-petition liabilities against any of the Loan Parties or any of their respective properties in a combined aggregate amount in excess of \$200,000 unless stayed, vacated or satisfied for a period of twenty (20) calendar days after entry thereof;

(xix) [reserved];

(xx) any Loan Party shall seek to sell any of its assets that are ABL Priority Collateral outside the ordinary course of business, unless the proceeds of such sale are used for the indefeasible payment in full of the Secured Obligations and Existing Secured Obligations unless such sale is consented to by the Administrative Agent and Required Lenders (and, if applicable, pursuant to bidding procedures approved by Administrative Agent);

(xxi) Holdings or any of its Subsidiaries (or any party with the support of any of Holdings or any of its Subsidiaries) shall challenge the validity or enforceability of any of the Loan Documents or the Existing Loan Documents;

(xxii) the consummation of a sale of all or substantially all of the Loan Parties' assets pursuant to Section 363 of the Bankruptcy Code, unless (a) the proceeds of such sale are applied to the indefeasible payment in full the Secured Obligations and Existing Secured Obligations or otherwise applied in accordance with the Financing Orders or (b) such sale is consented to by the Administrative Agent and Required Lenders; or

(xxiii) payment of or granting adequate protection with respect to any Indebtedness that was existing prior to the Filing Date other than as expressly provided in the Financing Order or permitted under the Intercreditor Agreement or as consented to by the Administrative Agent;

(s) Permitted Variances under the Approved Budget are exceeded for any period of time; or

(t) issuance of a Withdrawal Termination Instruction (as such term is defined in the Term Loan Agreement) under the Term Loan Documents to the Term Loan Agent;

then, and in every such event, notwithstanding the provisions of Section 362 of the Bankruptcy Code, and at any time thereafter during the continuance of such event and subject to the terms and conditions of, and any notice required under, the Financing Order with respect to actions against the Debtors, the Administrative Agent may, and, with respect to clause (A) and (B), at the request of the Required Lenders shall, by notice to the Borrower Representative, take either or both of the following actions, at the same or different times: (A) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (B) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, (C) subject to the applicable terms of the Financing Order, terminate the Loan Parties' right to use Cash Collateral (as defined in the Financing Order) by written notice thereof to counsel for the Loan Parties, counsel for the Official Committee (if any) and the U.S. Trustee, without further notice, application or order of the Bankruptcy Court and (D) subject to the applicable terms, if any, of the Financing Order (which will include, without limitation, a three (3) Business Day advance written notice period requirement with respect to the exercise of rights and remedies against the Debtors), exercise all other rights and remedies available to the Administrative Agent or the Lenders under the Loan Documents, under applicable law, including all remedies provided under the UCC, or in equity; provided that, during such three (3) Business Day period, none of the Administrative Agent or Lenders shall be required to provide any Loans or other financial accommodations under this Agreement (and that full cash dominion may be implemented hereunder without regard to such period). Notwithstanding anything to the contrary in the foregoing, in case of any event described in clauses (h) or (i) of this Article, the Commitments under this Agreement and under the Existing Credit Agreement shall automatically terminate and the principal of the Loans and the Existing Secured Obligations then outstanding, together with accrued interest thereon and fees and other obligations of the Borrowers accrued hereunder or under the Existing Credit Agreement, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers.

ARTICLE VIII

The Administrative Agent

Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Loan Parties or any Subsidiary of a Loan Party or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents 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 9.02), and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower Representative or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the creation, perfection or priority of Liens on the Collateral or the existence of the Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative 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. The Administrative 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. The Administrative Agent may consult with legal counsel (who may be counsel for 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.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may, upon thirty days prior notice (which notice may be given prior to the appointment and acceptance of a successor Administrative Agent), resign at any time effective upon the appointment of and the acceptance of such appointment by a successor Administrative Agent by notifying the Lenders, the Issuing Bank and the Borrower Representative. Upon any such resignation, the Required Lenders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, with the written consent of the Borrower Representative (provided that no consent of the Borrower Representative shall be unreasonably withheld or required if such successor is a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing) on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent which shall be a commercial bank or an Affiliate of any such commercial bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. 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 Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 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 it was acting as Administrative Agent.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or related agreement or any document furnished hereunder or thereunder.

Each Lender hereby agrees that (a) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (b) the Administrative Agent (i) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (ii) shall not be liable for any information contained in any Report; (c) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (d) it will keep all Reports confidential and strictly for its internal use, not share the Report with any other Person except as otherwise permitted pursuant to this Agreement; and (e) without limiting the generality of any other indemnification provision contained in this Agreement, it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorney fees) incurred by as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Administrative Agent or Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement and the other Loan Documents shall be taken in concert and at the direction or with the consent of Administrative Agent or Required Lenders.

Each Lender (and each Lender under the Existing Credit Agreement and each Existing Administrative Agent by executing this Agreement) hereby irrevocably appoints, designates and authorizes Administrative Agent to enter into the Intercreditor Agreement and any subordination or intercreditor agreement pertaining to any Subordinated Indebtedness, on its behalf and to take such action on its behalf under the provisions of the Intercreditor Agreement any such other agreement. Each Lender further agrees to be bound by the terms and conditions of the Intercreditor Agreement and each such other subordination or intercreditor agreement pertaining to any Subordinated Indebtedness.

Each Lender under the Existing Credit Agreement, and each Existing Administrative Agent, by executing this Agreement, hereby appoints and designates the Administrative Agent to take and hold guaranties and security under this Agreement and the other Loan Documents to guaranty and secure the Existing Secured Obligations (in addition to the Secured Obligations), and to apply any proceeds of any such guaranty or security or other amounts received by the Administrative Agent in respect thereof in the manner contemplated by this Agreement. In addition, for Mexican law purposes, each Lender (and each Lender under the Existing Credit Agreement and each Existing Administrative Agent by executing this Agreement) hereby grants to the Administrative Agent a *comisión mercantil con representación* in accordance with Articles 273, 274 and any other applicable Articles of the Commerce Code of Mexico (*Código de Comercio*) to act on its behalf as its agent in connection with this Agreement and the Loan Documents, and authorizes the Administrative Agent to enter into the Mexico Collateral Documents and to hold the Liens granted to it under such documents acting on behalf of itself and for the benefit of the Lenders under this Agreement and each Lender under the Existing Credit Agreement and each Existing Administrative Agent to secure the Existing Secured Obligations and any Secured Obligations. Furthermore, each Lender (and each Lender under the Existing Credit Agreement and each Existing Administrative Agent by executing this Agreement) hereby authorizes the Administrative Agent to delegate the above mentioned *comisión mercantil con representación* pursuant to Article 280 and any other applicable Articles of the Commerce Code of Mexico (*Código de Comercio*) to the extent permitted by and under the terms provided in the Intercreditor Agreement and any of the Loan Documents.

For the purposes of the Portugal Collateral Documents, each Lender (and each Existing Lender and each Existing Administrative Agent by executing this Agreement) hereby appoints European Collateral Agent to act on their behalf and for their benefit in connection with the execution of the Portugal Collateral Documents. European Collateral Agent is hereby expressly authorized to execute the Portugal Collateral Documents acting for itself and on behalf of and for the benefit of each Lender (and each Existing Lender).

Furthermore, each Lender (and each Existing Lender and each Existing Administrative Agent by executing this Agreement) appoints European Collateral Agent severally to be its attorney (with full power of substitution), on its behalf and in its name or otherwise (as a *mandatário com poderes de representação* in accordance and for the purposes of Article 1178 of the Portuguese Civil Code), at such time and in such manner as the attorney thinks fit, to:

- (a) exercise any of the rights expressed in the Portugal Collateral Documents to be conferred on European Collateral Agent; and
- (b) execute any notarial deed or any other document considered as necessary for the creation or perfection of any security promised or granted under the Portugal Collateral Documents.

Each Lender (and each Existing Lender and each Existing Administrative Agent) ratifies and confirms and agrees to ratify and confirm whatever European Collateral Agent as attorney does in the exercise or purported exercise of the power of attorney granted by it.

Should the Lenders (and the Existing Lenders and the Existing Administrative Agents) be unable to validly make the appointment and grant the powers foreseen under this Clause by executing or acceding as a party to the Loan Documents (as such term is defined in the Portugal Security Agreement), the Lenders shall, on the date of execution of, or accession to, the relevant Loan Documents (as such term is defined in the Portugal Security Agreement) and to the Portugal Security Agreement (as applicable), execute such documents as may be required for the purpose of making an appointment of, and granting powers to, European Collateral Agent, to act on their behalf and in their name or otherwise (as a *mandatário com poderes de representação* in accordance and for the purposes of Article 1178 of the Portugal Civil Code).

For the purposes of the above, European Collateral Agent in the exercise of the rights, powers and authority conferred and vested in it under this Agreement, any other Loan Document (as such term is defined in the Portugal Security Agreement) and the Portugal Collateral Documents for the benefit the Lenders for whom it acts;

(a) will exercise its powers, rights, duties and authority under the Portugal Security Documents in the manner provided for in this Agreement and in other Loan Documents (as such term is defined in the Portugal Security Agreement) and, in so acting, it shall have the protections, immunities, limitations of liability, rights, powers, authorizations, indemnities and benefits conferred on it under and by this Agreement and any other Loan Documents (as such term is defined in the Portugal Security Agreement);

(b) shall not owe any trustee or fiduciary duties to any party to this Agreement and of any other Loan Document (as such term is defined in the Portugal Security Agreement) or any of their directors, employees, agents or affiliates; and

(c) at any time after a security granted or to be granted under the Portugal Collateral Documents has become enforceable, to the fullest extent permitted by law, any rights conferred by the Portugal Collateral Documents, this Agreement or by law upon it and/or each Lender may be exercised by European Collateral Agent (on its own behalf and/ or as attorney for the Lenders, the Existing Lenders and/or the Existing Administrative Agents (as applicable)).

European Collateral Agent may delegate in any manner to any person any rights exercisable by it under the Portugal Collateral Documents. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as European Collateral Agent deems fit.

European Collateral Agent is a joint and several creditor of the Secured Obligations (as such term is defined in the Portugal Security Agreement) with the Lenders (and the Existing Lenders and each Existing Administrative Agent) and may demand performance of the Secured Obligations (as such term is defined in the Portugal Security Agreement) as principal and as joint and several creditor.

ARTICLE IX

Miscellaneous

Section 9.01 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 shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- (i) if to any Loan Party, to the Borrower Representative at:

Libbey Glass Inc.
300 Madison Avenue
Toledo, Ohio 43604
Attention: Juan Amezquita
Facsimile No: (419) 325-2585
E-mail: jamezq@libbey.com

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

Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304
Attention: Jennifer Van Driesen
Facsimile No: (202) 637-2201
E-mail: Jennifer.VanDriesen@lw.com

- (ii) (A) in the case of the US Borrower or any US Loan Party, if to the Administrative Agent, the Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

Asset Based Lending
925 Westchester Avenue, 3rd Floor
White Plains, New York, 10604
Attention: Donna DiForio/Libbey Glass Account Manager
Facsimile No: (914) 949-4871

- (B) in the case of the Netherlands Borrower or any Netherlands Loan Party, if to the Administrative Agent, the Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

Asset Based Lending
25 Bank Street
Canary Wharf
London, E14 5JP
Attention: Matthew Sparkes
Facsimile No: +44 (0) 203 493 1365

(iii) if to any other Lender, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received or (ii) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to compliance and no Event of Default certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. All such notices and other communications (i) sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (b)(i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Subject to Section 2.14(b), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or, (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender or increase the Revolving Netherlands Sublimit without the written consent of the Supermajority Lenders (provided that the Administrative Agent may make Protective Advances as set forth in Section 2.04), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or subject to Section 2.13(d) reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender directly affected thereby, (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender directly affected thereby, (iv) change Section 2.18(b) or (d) in a manner that would alter the manner in which payments are shared, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, (vi) release any Loan Guarantor from its obligation under its Loan Guaranty (except as otherwise permitted, including pursuant to a merger, consolidation, disposition, liquidation or dissolution permitted herein or in the other Loan Documents), without the written consent of each Lender, (vii) except as provided in clause (c) of this Section or in any Collateral Document, release all or substantially all of the Collateral or subordinate any Liens on any Collateral, without the written consent of each Lender or (viii) increase the advance rates set forth in the definitions of US Borrowing Base and Netherlands Borrowing Base or add new categories of eligible assets without the written consent of the Supermajority Lenders; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any change to Section 2.20 shall require the consent of the Administrative Agent, the Swingline Lender and the Issuing Bank and that any increase to the limit on LC Exposure set forth in Section 2.06(b)(i) shall require the consent of the Issuing Bank). The Administrative Agent may also amend the Commitment Schedule to reflect Commitment reductions effected in accordance herewith and assignments entered into pursuant to Section 9.04. Notwithstanding the foregoing (but subject to the foregoing clause (i)), any amendment, modification or waiver (i) to Section 2.11 and (ii) to the definitions of Aggregate Availability or the definitions used in the calculation thereof shall only require the consent of Required Lenders, the Administrative Agent and the Borrowers.

(c) The Lenders and any other holders of Secured Obligations hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the termination of all Commitments, payment and satisfaction in full in cash of all Secured Obligations (other than Unliquidated Obligations), and the cash collateralization of all Unliquidated Obligations for which a definite claim has been submitted to the Administrative Agent in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property leased to a Loan Party under a lease which has expired or been terminated or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that, the Administrative Agent may in its discretion, (i) release its Liens on Collateral valued in the aggregate not in excess of \$10,000,000 during any calendar year without the prior written authorization of the Required Lenders and (ii) release any of its Liens in connection with, or subordinate any of its Liens to, Liens permitted by Sections 6.02(d) and (e). Any such release shall not in any manner discharge, affect, or impair the Secured Obligations or any Liens (other than those expressly being released) upon (or obligations 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.

Section 9.03 Expenses; Indemnity; Damage Waiver.

(a) The Borrowers shall pay (i) (1) all reasonable documented out-of-pocket expenses incurred by the Administrative Agent and the Existing Administrative Agents and its Affiliates, including the reasonable documented fees, charges and disbursements of one counsel per jurisdiction and area of specialty (it being understood for this purpose that the State of Delaware is considered a separate jurisdiction) for the Administrative Agent, and (2) all reasonable documented fees, charges and disbursements of one counsel per Lender, in each case, in connection with the syndication and distribution (including, without limitation, via the internet or through a service such as IntraLinks) of the credit facilities provided for herein, the preparation and administration of the Loan Documents or Existing Loan Documents or any amendments, modifications or waivers of the provisions of the Loan Documents or Existing Loan Documents, or the Terminated Swap Agreements (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit (including any Existing Letter of Credit) or any demand for payment thereunder and (iii) all reasonable, documented out-of-pocket expenses incurred by the Administrative Agent, the Existing Administrative Agents, the Issuing Bank or any Lender or Existing Lender, including the fees, charges and disbursements of one counsel per jurisdiction for the Administrative Agent and one counsel per Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents or Existing Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder or the Existing Loan Documents, or the Terminated Swap Agreements, including all such out-of-pocket expenses incurred during any workout, restructuring or similar negotiations in respect of such Loans, Letters of Credit or Terminated Swap Obligations, including in connection with the Bankruptcy Cases. Expenses being reimbursed by the Borrowers under this Section or the Existing Credit Agreement including, without limiting the generality of the foregoing, costs and expenses incurred in connection with:

(i) subject to Section 5.11, appraisals and insurance reviews;

(ii) subject to Section 5.06, field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;

(iii) Taxes, fees and other charges for (A) Lien and title searches and title insurance and (B) recording the Mortgages, filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens; and

(iv) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing costs and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in Section 2.18(c).

(b) The Borrowers shall, jointly and severally, indemnify the Administrative Agent, the Existing Administrative Agents, the Issuing Bank and each Lender and Existing 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, penalties, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or the Existing Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations under this Agreement or the Existing Credit Agreement, or the consummation of the Transactions or any other transactions contemplated hereby or by the Existing Credit Agreement, (ii) any Loan, Letter of Credit or any Existing Secured Obligation or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of their Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of their 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; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses are determined by a court of competent jurisdiction by final judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any Related Party of such Indemnitee or such Related Party shall admit such gross negligence or willful misconduct in writing in a judicial proceeding of a court of competent jurisdiction. This Section 9.03(b) (other than Section 9.03(a)(iii)) shall not apply to Taxes, except any Taxes that represent losses, claims, damages, liabilities or reasonably related expenses arising from a non-Tax claim.

(c) To the extent that the Borrowers fail to pay any amount required to be paid by it to the Administrative Agent, the Existing Administrative Agents, the Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender and Existing Lender severally agrees to pay to the Administrative Agent, the Existing Administrative Agents, the Issuing Bank or the Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, penalty, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Existing Administrative Agents, the Issuing Bank or the Swingline Lender in its capacity as such.

(d) To the extent permitted by applicable law, no Loan Party shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or the Existing Credit Agreement or any agreement or instrument contemplated hereby or by the Existing Credit Agreement, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof or the Existing Secured Obligations.

(e) All amounts due under this Section shall be payable within ten (10) Business Days after written demand therefor.

Section 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) the Borrowers may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrowers without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in 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 its Commitments, Revolving Commitments and the Loans at the time owing to it (it being understood and agreed, except as otherwise agreed by Administrative Agent in its sole discretion, in making any assignment of a Commitment, Revolving Commitment or outstanding US Loans, such Lender must make a proportional assignment of such Lender's Revolving Netherlands Sublimit and outstanding Loans made to Netherlands Borrower, and vice versa)) with the prior written consent (such consent not to be unreasonably withheld) of:

- (A) [reserved];
- (B) the Administrative Agent; and
- (C) the Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consent, provided that no such consent of the Borrower Representative shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (provided that such fee shall not be charged if such assignment is between an assignor and assignee that are Affiliates of each other); and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

(E) in no event shall any such assignments be for an amount of less than 50,000 Euros (or the equivalent thereof in any other currency) of the Revolving Exposures.

For the purposes of this Section 9.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means 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) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent, the Issuing Bank and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice. It is intended that the Register be maintained such that the Loans are in registered form of the purposes of Sections 163(f), 165(j), 871(h), 881(c) and 4701 of the Code.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrowers, the Administrative Agent, the Issuing Bank or the Swingline Lender, 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 Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that directly affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form for the purposes of the Code, including under Section 5f.103-1(c) of the United States Treasury Regulations or its successor. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. It is intended that each Participant Register be maintained such that the Loans are in registered form for the purposes of the Code.

A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower Representative's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless the Borrower Representative is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 2.17(e) as though it were a Lender.

(d) 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, and this Section 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.

Section 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 9.06 Counterparts; Integration; Effectiveness. This Agreement and any other Loan Document 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, the Existing Credit Agreement, the other Loan Documents and the Existing Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. 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 any Loan Document by facsimile shall be effective as delivery of a manually executed counterpart of such Loan Document.

Section 9.07 Severability. Any provision of any Loan Document 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 thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, but excluding deposits held in trust accounts) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Borrower or any Loan Guarantor pledging Collateral as security for the Secured Obligations of such Borrower against any of and all the Secured Obligations arising in respect of such Borrower held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The applicable Lender shall notify the Borrower Representative and the Administrative Agent of such set-off or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

Section 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the laws of the State of New York, but giving effect to federal laws applicable to national banks, and, to the extent applicable, the Bankruptcy Code.

If a Netherlands Loan Party is represented by a Person acting under a power of attorney in connection with the signing and/or execution of this Agreement or any other deed, agreement or document referred to in this Agreement or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other parties that the existence and extent of such Person's authority under such power of attorney and the effects of the such Person's exercise or purported exercise of such Person's authority shall be governed by the laws of the Netherlands.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any U.S. Federal or New York State court sitting in New York, New York and the Bankruptcy Court in any action or proceeding arising out of or relating to any Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that if the Bankruptcy Court abstains from hearing or refuses to exercise jurisdiction, all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by 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 the fullest extent it may legally and effectively do so, to service of process in the manner provided for notices in Section 9.01. As an alternative method of service, each Netherlands Loan Party, each Mexico Loan Guarantor and the Portugal Loan Guarantor hereby also irrevocably appoints the Process Agent as its agent to receive on behalf of such Netherlands Loan Party, Mexico Loan Guarantor or Portugal Loan Guarantor, as applicable, and its property service of copies of any process, summons, notice or document in any action or proceeding arising out of or relating to any Loan Documents, or for the recognition or enforcement of any judgment. Such service may be made by mailing or delivering a copy of such process to the applicable Netherlands Loan Party, Mexico Loan Guarantor or Portugal Loan Guarantor in care of the Process Agent. Each Netherlands Loan Party, each Mexico Loan Guarantor and the Portugal Loan Guarantor hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf and the Process Agent hereby accepts its appointment to act as process agent on behalf of the Netherlands Loan Parties, the Mexico Loan Guarantors and the Portugal Loan Guarantor. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(e) Notwithstanding any other provision of this Section 9.09, the Bankruptcy Court shall have exclusive jurisdiction over any action or dispute involving, relating to or arising out of this Agreement or the other Loan Documents.

Section 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT 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.

Section 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12 Confidentiality. Each of the Administrative Agent, the Issuing Bank and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Requirement of Laws or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) to the extent necessary in connection with the exercise of any remedies hereunder or the Existing Loan Documents or any suit, action or proceeding relating to this Agreement, any other Loan Document or any Existing Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis other than through a breach of this Section from a source other than the Borrowers. For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrowers. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12 FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING HOLDINGS AND ITS AFFILIATES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWERS OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT HOLDINGS, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWERS AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

Section 9.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

Section 9.14 USA PATRIOT Act. Each Lender that is subject to the requirements of the Act hereby notifies the Borrowers that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the names and addresses of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the Act.

Section 9.15 Disclosure. Each Loan Party and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.16 Appointment for Perfection. Each Lender hereby appoints the Administrative Agent and each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession. Should any Lender (other than the Administrative Agent) obtain possession of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 9.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Lender.

Section 9.18 Judgment Currency.

(a) If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in one currency into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency in the city in which it normally conducts its foreign exchange operation for the first currency on the Business Day preceding the day on which final judgment is given.

(b) The obligation of each Loan Party in respect of any sum due from it to any Lender, the Administrative Agent or the Issuing Bank hereunder shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by such Lender, Administrative Agent or Issuing Bank of any sum adjudged to be so due in the Judgment Currency such Lender, Administrative Agent or Issuing Bank may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency; if the amount of Agreement Currency so purchased is less than the sum originally due to such Lender, Administrative Agent or Issuing Bank in the Agreement Currency, such Loan Party agrees notwithstanding any such judgment to indemnify such Lender, Administrative Agent or Issuing Bank against such loss, and if the amount of the Agreement Currency so purchased exceeds the sum originally due to any Lender, Administrative Agent or Issuing Bank, such Lender, Administrative Agent or Issuing Bank agrees to remit to such Loan Party such excess.

Section 9.19 DIP Netherlands Parallel Debt.

(a) For the purpose of this Section 9.19, "DIP Netherlands Principal Obligations" means the Netherlands Secured Obligations (other than the guaranties of the US Secured Obligations and the Existing US Secured Obligations provided by the Netherlands Loan Parties) as they may exist from time to time (but, for the avoidance of doubt, excluding each DIP Netherlands Parallel Debt (as defined below)).

(b) Each Loan Party irrevocably and unconditionally undertakes to pay to the European Collateral Agent amounts equal to the DIP Netherlands Principal Obligations as they may exist from time to time (each a "DIP Netherlands Parallel Debt"). Each DIP Netherlands Parallel Debt will become due and payable at the same time as the corresponding DIP Netherlands Principal Obligation becomes due and payable.

Section 9.20 DIP US Parallel Debt.

(a) For the purpose of this Section 9.20 "DIP US Principal Obligations" means the US Secured Obligations (other than the guaranties of the Netherlands Secured Obligations and the Existing Netherlands Secured Obligations provided by the US Loan Parties) as they may exist from time to time (but, for the avoidance of doubt, excluding each DIP US Parallel Debt (as defined below)).

(b) Each Loan Party irrevocably and unconditionally undertakes to pay to the European Collateral Agent amounts equal to the DIP US Principal Obligations as they may exist from time to time (each a "DIP US Parallel Debt"). Each DIP US Parallel Debt will become due and payable at the same time as the corresponding DIP US Principal Obligation becomes due and payable.

Section 9.21 Prepetition Parallel Debt.

(a) For the purpose of this Section 9.21 "Prepetition Principal Obligations" means the Existing US Secured Obligations as they may exist from time to time (but, for the avoidance of doubt, excluding each Prepetition Parallel Debt (as defined below)).

(b) Each Loan Party irrevocably and unconditionally undertakes to pay to the European Collateral Agent amounts equal to the Prepetition Principal Obligations as they may exist from time to time (each a "Prepetition Parallel Debt"). Each Prepetition Parallel Debt will become due and payable at the same time as the corresponding Prepetition Principal Obligation becomes due and payable.

Section 9.22 Parallel Debts

(a) The rights of the European Collateral Agent under each relevant Parallel Debts are its own claims to receive payment from the relevant Loan Party, several and independent from any right that any other party may have under the Loan Documents or the Existing Loan Documents.

(b) An amount received by the European Collateral Agent in discharge of a Parallel Debt will discharge the corresponding Principal Obligation in an equal amount.

(c) The aggregate amount outstanding under the Parallel Debts will never exceed the aggregate amount outstanding under the Principal Obligations.

(d) For purposes of any Netherlands Collateral Document any resignation by the European Collateral Agent is not effective with respect to its rights under the Parallel Debts until all rights and obligations under the Parallel Debts have been assigned to and assumed by the successor agent.

(e) The European Collateral Agent will reasonably cooperate in assigning its rights and obligations under the Parallel Debts to any such successor agent and will reasonably cooperate in transferring all rights and obligations under any Netherlands Collateral Document (as the case may be) to such successor agent.

(f) Each of the parties hereto agrees to and acknowledges the provisions set forth in any Netherlands Collateral Document relating to the Parallel Debts.

Section 9.23 Forbearance Agreement with respect to Netherlands Loan Parties. The Administrative Agent, the Lenders, each Existing Administrative Agent and Existing Lenders hereby agree that, notwithstanding the terms of the Existing Credit Agreement to the contrary, the Existing Netherlands Secured Obligations are deemed not to have been accelerated and become automatically due and payable by virtue of the filing of the Bankruptcy Cases (but rather may continue to remain outstanding, bear interest and be subject to repayment pursuant to the terms and conditions set forth in this Agreement), and none of the Administrative Agent, the Lenders, each Existing Administrative Agent and the Existing Lenders shall exercise any rights and remedies under the Existing Credit Agreement or other Existing Loan Documents against the Netherlands Loan Parties unless and until such time that an Event of Default shall occur under this Agreement (in which case all rights and remedies may be exercised against the Netherlands Loan Parties under the Existing Loan Documents and/or the Loan Documents as determined by Administrative Agent or Required Lenders). In addition, the Administrative Agent, the Lenders, each Existing Administrative Agent and Existing Lenders hereby agree that, notwithstanding the terms of the Existing Credit Agreement to the contrary, the failure of the Loan Parties to timely deliver the quarterly financial statements and corresponding compliance certificate for the fiscal quarter ending March 31, 2020 as required by Section 5.01(b) and (c) of the Existing Credit Agreement shall not constitute a Default or Event of Default under the Existing Credit Agreement or this Agreement; provided, however, the Loan Parties shall deliver such financial statements and corresponding compliance certificate for the fiscal quarter ending March 31, 2020 no later than the time period set forth in Section 5.01(b) and (c) of this Agreement, and if the Loan Parties fail to do so, such failure shall be a Default hereunder and under the Existing Credit Agreement.

Section 9.24 Euro Loans. If by reason of internal policies, legal requirements and limitations or lack of ready access to certain currencies, certain Lenders may not be able to make and maintain Commitments to or make Loans to certain of the Borrowers or make Loans in Euros to Netherlands Borrower, Chase may agree to assume such Commitments or make such Loans in place of such Lenders. If Chase agrees to make such Commitments, it shall agree with each such Lender that it will make or maintain one or more Commitments in the place of such Lender and shall record its agreement with respect thereto in the Register and such Lender shall thereby be released from such Commitment or shall not be required to make or maintain such Loans and such Commitment shall thereafter be included within Chase's Commitment for all purposes hereunder.

Section 9.25 Netherlands Security. Any security (whether in rem, contractual or otherwise) granted pursuant to or in connection with any Collateral Document governed by Netherlands law is intended to secure the Secured Obligations and the Existing US Secured Obligations, as amended, novated, supplemented, extended or restated from time to time (including by way of an increase of the credit made available under the relevant Loan Document or the accession or exit of a party to that document), and references in any such Collateral Document governed by Netherlands law to "Secured Obligations", "DIP Netherlands Secured Obligations", "DIP US Secured Obligations", "Prepetition Secured Obligations" (or similar wording) should therefore be construed to include any obligations as amended, novated, supplemented, extended or restated from time to time as described above.

Section 9.26 Existing Administrative Agents and Lenders. By their execution of this Agreement, each Existing Administrative Agent and Existing Lender consents, acknowledges and agrees to each of the provisions of this Agreement containing the agreement of or otherwise applicable to such Existing Administrative Agent, such Existing Lender, the Existing Credit Agreement and/or the other Existing Loan Documents, as applicable.

Section 9.27 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 9.28 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents or the Existing Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "US Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents, the Existing 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 US 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 US 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 US Special Resolution Regime, Default Rights under the Loan Documents or the Existing 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 US Special Resolution Regime if the Supported QFC and the Loan Documents or the Existing Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 9.29 Orders Control. In the event of any conflict between the terms of the Financing Order and the terms of this Agreement or any other Loan Document (including the Intercreditor Agreement), the terms of the Financing Order shall govern and control.

ARTICLE X

Loan Guaranty

Section 10.01 Guaranty.

(a) Each Loan Guarantor hereby agrees that it is jointly and severally liable for, and, as primary obligor and not merely as surety, absolutely and unconditionally guarantees to the Lenders the prompt payment when due, whether at Stated Maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and the Existing Secured Obligations and all reasonable, documented out-of-pocket costs and expenses including, without limitation, all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Administrative Agent, the Existing Administrative Agents, the Issuing Bank, the Lenders and the "Existing Lenders" in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, the Borrower, any Loan Guarantor or any other guarantor of all or any part of the Secured Obligations or Existing Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations") provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations or "Excluded Swap Obligations" (as defined under the Existing Credit Agreement) of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor. Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender or Existing Lender that extended any portion of the Guaranteed Obligations. Notwithstanding anything to the contrary set forth herein, the Portugal Loan Guarantor shall not be a Loan Guarantor solely for purposes of this Article X.

Section 10.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, the Existing Administrative Agents, the Issuing Bank or any Lender or Existing Lender to sue any Borrower, any Loan Guarantor, any other guarantor, or any other person obligated for all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

Section 10.03 No Discharge or Diminishment of Loan Guaranty.

(a) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of any Borrower or any other guarantor of or other person liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party, including, without limitation, the Bankruptcy Cases, or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights which any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender, or any other person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Existing Administrative Agents, the Issuing Bank or any Lender or Existing Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other guarantor of or other person liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Existing Administrative Agents, the Issuing Bank or any Lender or Existing Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

Section 10.04 Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower or any Loan Guarantor, other than the payment in full in cash of the Guaranteed Obligations other than any Unliquidated Obligations for which no definite claim has been submitted. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any person against any Obligated Party, or any other person. Each Loan Guarantor confirms that it shall not raise any surety law as a defense (if applicable) to its obligations hereunder. The Administrative Agent and the Existing Administrative Agents may, at its election, foreclose on any Collateral or "Collateral" (as defined in the Existing Credit Agreement) held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral or "Collateral" in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been fully and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security. Without limiting the generality of the foregoing, each Mexico Loan Guarantor hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, all rights and benefits of *orden, exclusión, división, quita, novación, espera* and/or *modificación* and any other rights specified in Articles 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2826, 2827, 2829, 2837, 2838, 2839, 2840, 2842, 2844, 2845, 2846, 2847, 2848 and 2849, and any other related or applicable Articles of the Federal Civil Code of Mexico (*Código Civil Federal*) and the corresponding provisions of the Civil Codes applicable in the States of Mexico (or any successor provisions) and in Mexico City, Mexico. Each Mexico Loan Guarantor hereby expressly and irrevocably represents that it has full knowledge about the content of such Articles described above, and therefore, such Articles are not required to be transcribed herein.

Section 10.05 Rights of Subrogation. No Loan Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against any Obligated Party, or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Existing Administrative Agents, the Issuing Bank and the Lenders and Existing Lenders.

Section 10.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise, including, without limitation in connection with the Bankruptcy Cases, each Loan Guarantor's obligations under this Loan Guaranty (if any) with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Existing Administrative Agents, the Issuing Bank and the Lenders and Existing Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of any Borrower, including, without limitation, by the Bankruptcy Cases, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Loan Guarantors to the extent such Loan Guarantor has guaranteed such Guaranteed Obligation forthwith on demand by the Lender or the Existing Lender.

Section 10.07 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that neither the Administrative Agent, the Existing Administrative Agents, the Issuing Bank nor any Lender or Existing Lender shall have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

Section 10.08 Termination. The Lenders and Existing Lenders may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five days after it receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lenders and the Existing Lenders for any Guaranteed Obligations which such Loan Guarantor has guaranteed, created, assumed or committed to prior to the fifth (5th) day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of that Guaranteed Obligations which such Loan Guarantor has guaranteed.

Section 10.09 Taxes. All payments of the Guaranteed Obligations will be made by each Loan Guarantor free and clear of and without deduction for any Taxes, except as required by applicable law; provided that if any Loan Guarantor shall be required to deduct any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, the Existing Administrative Agents, Lenders, Existing Lenders or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had such payment been made by the applicable Borrower in accordance with the terms of this Agreement, (ii) such Loan Guarantor shall make such deductions and (iii) such Loan Guarantor shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

Section 10.10 Maximum Liability. The provisions of this Loan Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, including, without limitation, the Bankruptcy Code, if the obligations of any Loan Guarantor under this Loan Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Loan Guarantor's liability under this Loan Guaranty, then, notwithstanding any other provision of this Loan Guaranty to the contrary, the amount of such liability shall, without any further action by the Loan Guarantors or the Lenders or the Existing Lenders, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Loan Guarantor's "Maximum Liability"). This Section with respect to the Maximum Liability of each Loan Guarantor is intended solely to preserve the rights of the Lenders and Existing Lenders to the maximum extent not subject to avoidance under applicable law, and no Loan Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Loan Guarantor hereunder shall not be rendered voidable under applicable law. Each Loan Guarantor agrees that the Guaranteed Obligations guaranteed by such Loan Guarantor may at any time and from time to time exceed the Maximum Liability of each Loan Guarantor without impairing this Loan Guaranty or affecting the rights and remedies of the Lenders or the Existing Lenders hereunder, provided that, nothing in this sentence shall be construed to increase any Loan Guarantor's obligations hereunder beyond its Maximum Liability.

Section 10.11 Contribution.

(a) In the event any Loan Guarantor (a "Paying Guarantor") shall make any payment or payments under this Loan Guaranty in respect of the Guaranteed Obligations or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Loan Guaranty in respect of the Guaranteed Obligations, each other Loan Guarantor (each a "Non-Paying Guarantor") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Applicable Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article X, each Non-Paying Guarantor's "Applicable Percentage" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Guarantor's Maximum Liability as of such date in respect of the Guaranteed Obligations (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability in respect of the Guaranteed Obligations has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrowers after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Loan Guarantors hereunder in respect of the Guaranteed Obligations (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Loan Guarantor in respect of the Guaranteed Obligations, the aggregate amount of all monies received by such Loan Guarantors from the Borrowers after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Loan Guarantor's several liability for the entire amount of the Guaranteed Obligations (up to such Loan Guarantor's Maximum Liability in respect of the Guaranteed Obligations).

(b) [Reserved].

(c) Each of the Loan Guarantors covenants and agrees that its right to receive any contribution under this Loan Guaranty from a Paying Guarantor or Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of the Guaranteed Obligations. This provision is for the benefit of both the Administrative Agent, the Existing Administrative Agents, the Issuing Bank, the Lenders, the Existing Lenders and the Loan Guarantors and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

Section 10.12 Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Existing Administrative Agents, the Issuing Bank and the Lenders and the Existing Lenders under this Agreement, the Existing Credit Agreement and the other Loan Documents and Existing Loan Documents to which such Loan Party is a party without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

Section 10.13 Effect of Netherlands Civil Code. Notwithstanding the foregoing provisions of this Article X, no Loan Party residing or incorporated in The Netherlands shall, or shall be deemed to, guarantee any Obligations or otherwise bind itself (whether by indemnification or otherwise) to the extent that if included, such act would constitute unlawful financial assistance within the meaning of Article 98c or 207c of Book 2 of the Netherlands Civil Code.

Section 10.14 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a CEA Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.14 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.14 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.14 shall remain in full force and effect until the termination of all CEA Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.14 constitute, and this Section 10.14 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE XI

The Borrower Representative

Section 11.01 Appointment; Nature of Relationship. Libbey Glass Inc. is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the "Borrower Representative") hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XI. The Administrative Agent, the Existing Administrative Agents and the Lenders and the Existing Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

Section 11.02 Powers. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

Section 11.03 Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

Section 11.04 Notices. Each Borrower shall immediately notify the Borrower Representative of the occurrence of any Default or Event of Default hereunder referring to this Agreement describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder shall constitute notice to each Borrower on the date received by the Borrower Representative.

Section 11.05 Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent shall give prompt written notice of such resignation to the Lenders.

Section 11.06 Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including without limitation, the Aggregate Borrowing Base Certificate and the Borrowing Base Certificate of each Borrower and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrowers.

Section 11.07 Reporting. Each Borrower hereby agrees that such Borrower shall furnish promptly after each week to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative shall rely to prepare the Aggregate Borrowing Base Certificate and the Borrowing Base Certificate of each Borrower and Compliance Certificates required pursuant to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWERS:

LIBBEY GLASS INC.

By: /s/ Michael P. Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LIBBEY EUROPE B.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

Signature Page to Debtor-In-Possession Credit Agreement

OTHER LOAN PARTIES:

LIBBEY INC.

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LGA3 CORP.

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

THE DRUMMOND GLASS COMPANY

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LGA4 CORP.

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

SYRACUSE CHINA COMPANY

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LGFS INC.

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

WORLD TABLEWARE INC.

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LGC CORP.

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LGAC LLC

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LIBBEY.COM LLC

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

LGAU CORP.

By: /s/ Michael P Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

Signature Page to Debtor-In-Possession Credit Agreement

LIBBEY INTERNATIONAL C.V.
represented by its general partner LIBBEY
GLASS INC.

By: /s/ Jennifer Michele Jaffee

—
Name: Jennifer Michele Jaffee
Title: Senior Vice President, General
Counsel and Secretary

B.V. KONINKLIJKE NEDERLANDSCHE
GLASFABRIEK LEERDAM

By: /s/ Jennifer Michele Jaffee

—
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

LIBBEY EUROPE FINANCE COMPANY B.V.

By: /s/ Jennifer Michele Jaffee

—
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

LIBBEY MEXICO HOLDINGS B.V.

By: /s/ Jennifer Michele Jaffee

—
Name: Jennifer Michele Jaffee
Title: Authorized Signatory

LIBBEY MÉXICO, S. DE R.L. DE C.V.

By: /s/ Jennifer Michele Jaffee

—
Name: Jennifer Michele Jaffee
Title: Attorney-In-Fact

CRISA LIBBEY MÉXICO, S. DE R.L. DE C.V.

By: /s/ Jennifer Michele Jaffee

—
Name: Jennifer Michele Jaffee
Title: Attorney-In-Fact

CRISAL-CRISTALARIA AUTOMÁTICA, SA

By: /s/ Jennifer Michele Jaffee

Name: Jennifer Michele Jaffee

Title: Chairman of the Board of
Directors with delegated powers

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JPMORGAN CHASE BANK, N.A., individually,
as Administrative Agent, Lender, Issuing Bank,
Swingline Lender, Existing US Administrative
Agent and an Existing Lender

By: /s/ Donna DiForio
Name: Donna DiForio
Title: Authorized Officer

J.P. MORGAN EUROPE LIMITED, in its
capacity as an affiliate of JPMorgan Chase Bank,
N.A. designated as Administrative Agent for
purposes of the Portugal Collateral Documents
and Netherlands Collateral Documents and as
Existing Netherlands Administrative Agent with
respect to Section 9.23

By: /s/ Matthew Sparkes
Name: Matthew Sparks
Title: Authorized Officer

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BARCLAYS BANK PLC,
as a Lender and Existing Lender

By: /s/ Arvind Admal

Name: Arvind Admal

Title: Vice President

CITIBANK, N.A., as a Lender and Existing
Lender

By: /s/ Christopher Marino

Name: Christopher Marino

Title: Director & Vice President

FIFTH THIRD BANK, NATIONAL
ASSOCIATION
as a Lender and Existing Lender

By: /s/ Donald K. Mitchell

Name: Donald K. Mitchell

Title: Vice President

Signature Page to Debtor-In-Possession Credit Agreement

AMENDED AND RESTATED INTERCREDITOR AGREEMENT

This Amended and Restated Intercreditor Agreement is dated as of June 3, 2020, and entered into by and among Libbey Glass Inc., a Delaware corporation (the "Company"), Libbey Inc., a Delaware corporation ("Holdings"), the Subsidiaries of the Company listed on the signature pages hereof (together with any subsidiary that becomes a party hereto after the date hereof, the "Company Subsidiaries"), J.P. Morgan Europe Limited, in its capacity as administrative agent with respect to the Netherlands Revolving Loans under the Existing ABL Loan Agreement (in such capacity, including its successors and assigns from time to time, "Existing Netherlands ABL Agent") and in its capacity as a designated collateral agent for purposes of holding certain Collateral in connection with the DIP ABL Loan Agreement (in such capacity, together with its successors and assigns from time to time, "DIP ABL Sub-Agent"), JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the DIP ABL Loan Agreement, including its successors and assigns from time to time (together with DIP ABL Sub-Agent, the "DIP ABL Agent") and in its capacity as administrative agent under the Existing ABL Loan Agreement, including its successors and assigns from time to time (together with Existing Netherlands ABL Agent, the "Existing ABL Agent"), any other ABL Agent from time to time party hereto, Cortland Capital Market Services LLC, in its capacity as collateral agent under the DIP Term Loan Agreement, including its successors and assigns from time to time in such capacity (in such capacity, the "DIP Term Agent") and in its capacity as collateral agent under the Existing Term Loan Agreement, including its successors and assigns from time to time in such capacity (in such capacity, the "Existing Term Agent"), any other Term Agent from time to time party hereto and Cortland Capital Market Services LLC, in its capacity as Specified Mexico Collateral Agent (as defined below) for the Specified Mexico Collateral Claimholders (as defined below). Capitalized terms used in this Agreement have the meanings assigned to them in Section 1.

RECITALS

The Company, Libbey Europe B.V., Holdings, the other Loan Parties (as defined therein) party thereto, the lenders from time to time party thereto (the "Existing ABL Lenders") the Existing ABL Agent and the Existing Netherlands ABL Agent, have entered into that certain Amended and Restated Credit Agreement, dated as of February 8, 2010 (as amended, restated, amended and restated, supplemented or modified from time to time, the "Existing ABL Loan Agreement");

The Company, Libbey Europe B.V., Holdings, the other Loan Parties (as defined therein) party thereto, the lenders from time to time party thereto (the "DIP ABL Lenders") and the DIP ABL Agent, have entered into that certain Debtor-in-Possession Credit Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or modified from time to time, the "DIP ABL Loan Agreement");

The Company, Holdings, the lenders from time to time party thereto (the "Existing Term Lenders"), the Existing Term Agent and the other parties and agents party thereto have entered into that certain Senior Secured Credit Agreement, dated as of the Existing Closing Date (as amended, restated, amended and restated, supplemented or modified from time to time, the "Existing Term Loan Agreement");

The Company, Holdings, the other Loan Parties (as defined therein) party thereto, the lenders from time to time party thereto (the "DIP Term Lenders") and the DIP Term Agent, have entered into that certain Superpriority Secured Debtor-In-Possession Credit Agreement dated as of the date hereof (as amended, restated, amended and restated, supplemented or modified from time to time, the "DIP Term Loan Agreement");

The Company, Holdings, the Company Subsidiaries (as defined therein) party thereto, the Existing ABL Agent and Existing Term Agent have entered into that certain Intercreditor Agreement, dated as of the Existing Closing Date (as amended, restated, amended and restated, supplemented or modified from time to time prior to the date hereof, the "Existing Intercreditor Agreement");

On June 1, 2020 (the "Petition Date"), the Company, Holdings and certain of the Company Subsidiaries (each a "Debtor" and collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

On June 3, 2020, the Bankruptcy Court entered that certain Interim Order Pursuant to Sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code (i) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (ii) Granting (a) Liens and Superpriority Administrative Expense Claims, and (b) Adequate Protection to Certain Prepetition Lenders; (iii) Authorizing the Use of Cash Collateral; (iv) Modifying the Automatic Stay; (v) Scheduling a Final Hearing; and (vi) Granting Related Relief; and

In order to induce the DIP ABL Agent and the DIP ABL Lenders to enter into the DIP ABL Loan Agreement, and the DIP Term Agent and the DIP Term Lenders to enter into the DIP Term Loan Agreement, the parties hereto have agreed to amend and restate the Existing Intercreditor Agreement on the terms and conditions set forth herein in order to, among other things, set forth the relative priorities of the respective Liens of the Agents on the Collateral.

Accordingly, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree to amend and restate the Existing Intercreditor Agreement in its entirety and hereby agree as follows:

AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS.

1.1. Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"ABL Agent" means, individually or collectively, the Existing ABL Agent, the Existing Netherlands ABL Agent, the DIP ABL Agent, the DIP ABL Sub-Agent, and any successor or other agent under any ABL Loan Agreement.

"ABL Claimholders" means, at any relevant time, the holders of ABL Obligations at that time, including, without limitation, the ABL Lenders and the ABL Agent under the ABL Loan Agreement and the Bank Product Providers in each case solely in their capacities as such and not in any other capacity.

"ABL Collateral" means all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any ABL Obligations.

"ABL Default" means an "Event of Default" (as defined in the DIP ABL Loan Agreement or any substantially similar term in a Refinancing).

"ABL Lenders" means the Existing ABL Lenders, the DIP ABL Lenders and any other "Lenders" under and as defined in the ABL Loan Agreement or any other Person which extends credit under the ABL Loan Agreement in each case solely in their capacities as such and not in any other capacity.

"ABL Loan Agreement" means collectively, (a) the Existing ABL Loan Agreement, (b) the DIP ABL Loan Agreement and (c) any other credit agreement or credit agreements, one or more debt facilities, and/or commercial paper facilities, in each case, with banks or other institutional or commercial lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from (or sell such receivables to) such lenders against such receivables), letters of credit, bankers' acceptances, or other borrowings, that has been incurred to increase, replace (whether upon or after termination or otherwise), refinance or refund in whole or in part from time to time the Obligations outstanding under the Existing ABL Loan Agreement, the DIP ABL Loan Agreement or any other agreement or instrument referred to in this clause which (I) is designated as an "ABL Loan Agreement" by (x) if any other ABL Loan Agreement is then in effect, the ABL Agent thereunder or (y) if no other ABL Loan Agreement is then in effect, the Company, and (II) the ABL Agent for such agreement shall have executed a supplement to this Agreement agreeing to be bound hereby on the same terms applicable to the applicable ABL Agent, whether or not such increase, replacement, refinancing or refunding occurs (i) with the original parties thereto, (ii) on one or more separate occasions or (iii) simultaneously or not with the termination or repayment of the Existing ABL Loan Agreement, the DIP ABL Loan Agreement or any other agreement or instrument referred to in this clause, unless such agreement or instrument is not a Permitted Refinancing Agreement. Any reference to the ABL Loan Agreement hereunder shall be deemed a reference to any ABL Loan Agreement then in existence.

"ABL Loan Documents" means the ABL Loan Agreement and the "Loan Documents" (as defined in each ABL Loan Agreement), Bank Products, the Financing Order, and each of the other agreements, documents and instruments executed pursuant thereto, and any other document or instrument executed or delivered at any time in connection with the ABL Loan Agreement or any Bank Products, including any intercreditor or joinder agreement among holders of ABL Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, supplemented, modified, renewed, extended or Refinanced from time to time in accordance with the provisions of this Agreement.

"ABL Mortgages" means a collective reference to the Financing Order and each mortgage, deed of trust and other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any ABL Obligations or under which rights or remedies with respect to any such Liens are governed.

"ABL Obligations" means all Obligations outstanding under the ABL Loan Agreement and the other ABL Loan Documents, including any Bank Products and Terminated Swap Obligations (as defined in the DIP ABL Loan Agreement). "ABL Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding (including the Bankruptcy Cases) in accordance with the rate specified in the relevant ABL Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"ABL Priority Collateral" means all now-owned or hereafter acquired ABL Collateral that constitutes (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute ABL Priority Collateral):

- (a) Accounts, other than Accounts which arise from the sale, license, assignment or other disposition of Term Priority Collateral;
- (b) Inventory and Documents for any Inventory;
- (c) all Intellectual Property;
- (d) Capital Stock of the Company held by Libbey Inc.;
- (e) Capital Stock held by the Company or any Subsidiary of the Company that is a Grantor;
- (f) Deposit Accounts (other than the DIP Term Funding Account) and Securities Accounts (including all cash, cash equivalents, Money, checks, Instruments, funds, ACH transfers, wired funds, Investment Property, and other funds and property held in or on deposit in any of the foregoing, but excluding any identifiable Proceeds of Term Priority Collateral held in any of the foregoing);
- (g) Letter of Credit Rights arising out of, or related to, or derivative of any of the property or interests in property described in this definition;
- (h) letters of credit transferred to the ABL Agent or any ABL Lender, or with respect to which the Proceeds thereof have been assigned to the ABL Agent or any ABL Lender, or on which the ABL Agent or any ABL Lender is named as beneficiary, in each case arising out of, related to, or derivative of the property or interests described in this definition;
- (i) Supporting Obligations and Commercial Tort Claims, in each case, to the extent arising out of, or related to, or derivative of the property or interests in property described in this definition;
- (j) all contracts, contract rights, other General Intangibles, Chattel Paper, and Instruments (including promissory notes), in each case, to the extent arising out of, or related to, or derivative of the property or interests in property described in this definition;
- (k) all General Intangibles (other than Term General Intangibles);
- (l) all Investment Property;
- (m) all assets and property of whatever kind and nature of all Grantors that are Foreign Subsidiaries;
- (n) all Avoidance Actions against any ABL Claimholder;
- (o) all proceeds of any disgorgement of any Refinancing of the ABL Obligations under the Existing ABL Loan Agreement and the other "Loan Documents" (as defined therein) from proceeds of the DIP ABL Loan Agreement;
- (p) all books and Records relating to the items referred to in the preceding clauses (a) through (o), or the succeeding clause (q) (including all books, databases, data processing software, customer lists, engineer drawings, and Records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (a) through (o), or the succeeding clause (q)); and

(q) all collateral security and guarantees with respect to any of the foregoing and, subject to Section 3.5, all proceeds, products, substitutions, replacements, accessions, cash, Money, insurance proceeds, Instruments, Securities, Security Entitlements, Financial Assets and Deposit Accounts (except Deposit Accounts containing identifiable Term Priority Proceeds under clause (g) of the definition of "Term Priority Collateral", but only to the extent of such identifiable Term Priority Proceeds) received as proceeds of any of the foregoing, but excluding identifiable proceeds from Term Priority Collateral (collectively, "ABL Priority Proceeds").

For purposes of clarification, and notwithstanding anything to the contrary set forth in this Agreement, any of the items set forth in this paragraph that are or become branded, or otherwise produced through the use or other application of, any Trademarks or other Intellectual Property, whether pursuant to the exercise of rights pursuant to Section 3.4 or otherwise, shall fully constitute ABL Priority Collateral, and no Proceeds arising from any Disposition of any such ABL Priority Collateral shall be, or be deemed to be, attributable to Term Priority Collateral.

For the avoidance of doubt, it is hereby acknowledged and agreed that (i) the Existing Term Obligations will not be secured by a Lien on or security interest in any Foreign Subsidiary Assets, (regardless of whether such assets or property are or have been pledged to the ABL Agent under the ABL Loan Agreement, the DIP Term Agent under the DIP Term Loan Agreement or the Specified Mexico Collateral Agent under the Specified Mexico Collateral Documents) and nothing in this Agreement shall be deemed to grant any rights to the Existing Term Agent in respect of such Foreign Subsidiary Assets, (ii) Foreign Subsidiary Assets (regardless of whether such assets or property are or have been pledged to the ABL Agent under the ABL Loan Agreement, the DIP Term Agent under the DIP Term Loan Agreement or the Specified Mexico Collateral Agent under the Specified Mexico Collateral Documents) shall constitute ABL Priority Collateral and shall not be included as Term Priority Collateral (but shall, for the avoidance of doubt, be included as Term Collateral to secure the DIP Term Obligations) and (iii) the ABL Obligations will not be secured by a Lien on or security interest in the DIP Term Funding Account or any identifiable proceeds of loans under the DIP Term Loan Agreement funded on or after the date hereof and deposited in the DIP Term Funding Account, and the DIP Term Funding Account and all identifiable proceeds of loans under the DIP Term Loan Agreement funded on or after the date hereof and deposited in the DIP Term Funding Account shall serve as collateral solely for the DIP Term Obligations.

"ABL Security Documents" means the Financing Order and any other agreement, document or instrument pursuant to which a Lien is granted securing any ABL Obligations or under which rights or remedies with respect to such Liens are governed.

"Access Period" means for each parcel of Mortgaged Premises or other Term Priority Collateral, the period, which begins on the earlier of (a) the day on which the ABL Agent provides the Term Agent with an Enforcement Notice and (b) the fifth Business Day after any Term Agent provides the ABL Agent with notice that such Term Agent (or its agent) has obtained possession or control of such Mortgaged Premises or other Term Priority Collateral in connection with an Enforcement and ends on the earliest of (i) the 180th day after the date (the "Initial Access Date") on which the ABL Agent initially obtains the ability to take physical possession of, remove, or otherwise control physical access to, or actually uses, the applicable ABL Priority Collateral plus such number of days, if any, after the Initial Access Date that it is stayed or otherwise prohibited by law or court order from exercising remedies with respect to ABL Priority Collateral and (ii) the Discharge of ABL Obligations.

"Account Agreements" means any lockbox account agreement, pledged account agreement, blocked account agreement, securities account control agreement, or any similar deposit or securities account agreements among a Term Agent and/or the ABL Agent, one or more Grantors and the relevant financial institution depository or securities intermediary.

"Accounts" means all present and future "accounts" (as defined in Article 9 of the UCC).

"Additional Joinder Agreement" shall mean a joinder agreement in the form of Exhibit B hereto.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, a Person shall be deemed to **"control"** or be **"controlled by"** a Person if such Person possesses, directly or indirectly, power to direct or cause the direction of the management or policies of such Person whether through ownership of equity interests, by contract or otherwise.

"Agents" means each ABL Agent and each Term Agent.

"Agreement" means this Amended and Restated Intercreditor Agreement, as amended, restated, renewed, extended, supplemented or otherwise modified from time to time.

"Avoidance Actions" means any and all claims and causes of action of any Debtor's estate arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, together with any proceeds therefrom.

"Bank Product Debt" means Indebtedness and other Obligations relating to Bank Products.

"Bank Product Provider" means any ABL Lender or Affiliate of an ABL Lender that is providing Banking Services (as such term is defined in the Existing ABL Loan Agreement and the DIP ABL Loan Agreement and any substantially equivalent term in any other ABL Loan Agreement) to any Grantor or that is a party to a Swap Agreement (as such term is defined in the Existing ABL Loan Agreement and the DIP ABL Loan Agreement and any substantially equivalent term in any other ABL Loan Agreement) with any Grantor.

"Bank Products" means any Swap Agreement (as such term is defined in the Existing ABL Loan Agreement and the DIP ABL Loan Agreement and any substantially equivalent term in any other ABL Loan Agreement) evidencing Swap Obligations (as such term is defined in the Existing ABL Loan Agreement and the DIP ABL Loan Agreement and any substantially equivalent term in any other ABL Loan Agreement) or agreement evidencing Banking Services Obligations (as such term is defined in the Existing ABL Loan Agreement and the DIP ABL Loan Agreement and any substantially equivalent term in any other ABL Loan Agreement).

"Bankruptcy Cases" means the cases of the Debtors jointly administered under chapter 11 of the Bankruptcy Code pending before the Bankruptcy Court, bearing case number 20-11439 and any superseding chapter 7 case or cases.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Bankruptcy Court" has the meaning assigned to that term in the Recitals.

"Bankruptcy Law" means the Bankruptcy Code, the Dutch Bankruptcy Act (*Faillissementswet*) and any similar federal, state or foreign law for the relief of debtors or affecting creditors' rights generally.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City, Chicago, Illinois or Wilmington, Delaware are authorized or required by law to close.

"Capital Stock" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership or partnership interests or shares and (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person and all rights, warrants or options exchangeable for or convertible into any of the items described in clauses (a) through (e) above; provided that with respect to the foregoing, Capital Stock shall exclude any debt securities convertible into Capital Stock, whether or not such debt securities include any right of vote or participation with Capital Stock.

"Chattel Paper" means all present and future "chattel paper" (as defined in Article 9 of the UCC).

"Claimholder" means any Term Claimholder or ABL Claimholder, as applicable.

"Collateral" means any and all of the assets and property of any Grantor, whether real, personal or mixed, which constitute ABL Collateral or Term Collateral. Notwithstanding anything to the contrary contained herein or otherwise, the DIP Term Funding Account and all identifiable proceeds of loans under the DIP Term Loan Agreement funded on or after the date hereof and deposited in the DIP Term Funding Account shall serve as collateral solely for the DIP Term Obligations, and shall not constitute "Collateral" hereunder.

"Collateral Agent" means each Agent, the Specified Mexico Collateral Agent and the Mexico Security Trustee for any Mexico Security Trust.

"Commercial Tort Claims" means all present and future "commercial tort claims" (as defined in Article 9 of the UCC).

"Company" has the meaning assigned to that term in the Preamble to this Agreement.

"Company Subsidiary" has the meaning assigned to that term in the Preamble to this Agreement.

"Conforming Plan of Reorganization" means any Plan of Reorganization whose provisions are consistent with the provisions of this Agreement.

"Debtors" has the meaning assigned to that term in the Recitals.

"Deposit Accounts" means all present and future "deposit accounts" (as defined in Article 9 of the UCC).

"DIP ABL Agent" has the meaning assigned to that term in the Preamble to this Agreement.

"DIP ABL Claimholders" means, at any relevant time, the holders of DIP ABL Obligations at that time, including, without limitation, the DIP ABL Lenders and the DIP ABL Agent under the DIP ABL Loan Agreement and the Bank Product Providers under the DIP ABL Loan Agreement in each case solely in their capacities as such and not in any other capacity.

"DIP ABL Loan Agreement" has the meaning assigned to that term in the Recitals.

"DIP ABL Lender" has the meaning assigned to that term in the Recitals to this Agreement.

"DIP ABL Obligations" means all Obligations outstanding under the DIP ABL Loan Agreement and the other Loan Documents (as defined in the DIP ABL Loan Agreement), including any Bank Products, Terminated Swap Obligations (as defined in the DIP ABL Loan Agreement) and all DIP ABL Roll-Up Obligations. "DIP ABL Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding (including the Bankruptcy Cases) in accordance with the rate specified in the relevant DIP ABL Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"DIP ABL Roll-Up Obligations" means, at any relevant time, such portion of the Existing ABL Obligations that have been (or have been deemed to be) exchanged for (and repaid and refinanced by) any DIP ABL Obligations (including the deemed re-issuance of all extant letters of credit and assumption or incurrence of Existing ABL Obligations constituting Bank Products as DIP ABL Obligations) and all interest, fees, costs and other charges accrued or owing in respect thereof.

"DIP Term Funding Account" has the meaning assigned to the term "Funding Account" in the DIP Term Loan Agreement (as in effect on the date hereof).

"DIP Term Claimholders" means, at any relevant time, the holders of DIP Term Obligations at that time, including the DIP Term Lenders and the DIP Term Agent in each case solely in their capacities as such and not in any other capacity.

"DIP Term Agent" has the meaning assigned to that term in the Preamble to this Agreement.

"DIP Term Loan Agreement" has the meaning assigned to that term in the Recitals.

"DIP Term Lender" has the meaning assigned to that term in the Recitals to this Agreement.

"DIP Term Obligations" means, at any relevant time, all Obligations outstanding under the DIP Term Loan Agreement and the other Loan Documents (as defined in the DIP Term Loan Agreement), including, without limitation, all Loan Obligations and Secured Obligations (each as defined in the DIP Term Loan Agreement) and all DIP Term Roll-Up Obligations. "DIP Term Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding (including the Bankruptcy Cases) in accordance with the rate specified in the DIP Term Loan Agreement or other relevant Loan Document (as defined in the DIP Term Loan Agreement), whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"DIP Term Roll-Up Obligations" means, at any relevant time, such portion of the Existing Term Obligations that have been deemed to be exchanged for (and repaid and refinanced by) any DIP Term Obligations and all interest, fees, costs and other charges accrued or owing in respect thereof.

"DIP Financing" has the meaning assigned to that term in Section 6.1.

"Discharge of ABL Obligations" means, except to the extent otherwise expressly provided in Section 5.5:

- (a) payment in full in cash of all ABL Obligations (other than (i) Bank Product Debt which is not then due and payable except as provided in clause (c) below and (ii) contingent obligations or contingent indemnification obligations except as provided in clause (e) below);
- (b) termination or expiration of all commitments, if any, to extend credit under the ABL Loan Documents;
- (c) termination and payment in full in cash or cash collateralization (in an amount and manner reasonably satisfactory to the ABL Agent) of all Bank Product Debt;
- (d) termination, cash collateralization (in an amount and manner reasonably satisfactory to the ABL Agent, but in no event greater than 105% of the aggregate undrawn face amount, plus commissions, fees, and expenses) or backstop of all letters of credit issued under the ABL Loan Agreement in compliance with the terms of the ABL Loan Agreement; and
- (e) cash collateralization (or support by a letter of credit) for any costs, expenses and contingent indemnification obligations included in the ABL Obligations that are not yet due and payable but with respect to which a claim has been asserted in writing under any ABL Loan Documents (in an amount and manner reasonably satisfactory to the ABL Agent).

"Discharge of DIP Term Obligations" means, except to the extent otherwise expressly provided in Section 5.5, payment in full in cash of all DIP Term Obligations (other than contingent obligations or indemnification obligations, in each case for which no claim has been asserted), and termination or expiration of all commitments, if any, to extend credit under the DIP Term Loan Agreement.

"Discharge of Prior Lien Obligations" shall mean:

- (a) with respect to the ABL Priority Collateral as it relates to the Term Claimholders, the Discharge of ABL Obligations; and
- (b) with respect to the Term Priority Collateral as it relates to the ABL Claimholders, the Discharge of Term Obligations.

"Discharge of Term Obligations" means, except to the extent otherwise expressly provided in Section 5.5, payment in full in cash of all Term Obligations (other than contingent obligations or indemnification obligations, in each case for which no claim has been asserted), and termination or expiration of all commitments, if any, to extend credit under the Term Loan Documents.

"Disposition" means any sale, lease, exchange, transfer or other disposition of any Collateral.

"Documents" means all present and future "documents" (as defined in Article 9 of the UCC).

"Domestic Subsidiary" means any Subsidiary of the Company organized under the laws of the United States, any state thereof or the District of Columbia.

"Enforcement" means, collectively or individually for one or both of the ABL Agent or any ABL Claimholder or any Term Agent or any Term Claimholder to enforce or attempt to enforce any right or power to repossess, replevy, attach, garnish, levy upon, collect the Proceeds of, foreclose or realize in any manner whatsoever its Lien upon, sell, liquidate or otherwise dispose of, or otherwise restrict or interfere with the use of, or exercise any remedies with respect to, any Collateral, whether by judicial enforcement of any of the rights and remedies under the ABL Loan Documents, the Term Loan Documents and/or under any applicable law, by self-help repossession, by non-judicial foreclosure sale, lease, or other disposition, by set-off, by notification to account obligors of any Grantor, by any sale, lease, or other disposition implemented by any Grantor at the direction of the ABL Agent or any Term Agent, or otherwise, but in all cases excluding (i) the establishment of borrowing base reserves, collateral ineligibles, or other conditions for advances, (ii) the changing of advance rates or advance sublimits, (iii) the imposition of a default rate or late fee, (iv) the collection and application (including pursuant to "cash dominion" provisions) of Accounts or other monies deposited from time to time in Deposit Accounts or Securities Accounts, in each case, against the ABL Obligations pursuant to the provisions of the ABL Loan Documents (including, without limitation, the notification of account debtors, depositary institutions or any other Person to deliver proceeds of Collateral to the ABL Agent), (v) the cessation of lending pursuant to the provisions of the ABL Loan Documents or Term Loan Documents, including upon the occurrence of a default due to the existence of an over-advance, (vi) the filing of a proof of claim in any Insolvency or Liquidation Proceeding, (vii) the consent by the ABL Agent to disposition by any Grantor of any of the ABL Priority Collateral, and (viii) the acceleration of the Term Obligations or the ABL Obligations.

"Enforcement Notice" means a written notice delivered, at a time when an ABL Default or Term Default has occurred and is continuing, by either an ABL Agent to the Term Agents, or a Term Agent to the ABL Agents, announcing that such party intends to commence Enforcement against its Priority Collateral and specifying the ABL Default or Term Default, as applicable.

"Equipment" means all now owned and hereafter acquired equipment, as defined in Article 9 of the UCC.

"Existing ABL Agent" has the meaning assigned to that term in the Preamble.

"Existing ABL Claimholders" means, at any relevant time, the holders of Existing ABL Obligations at that time, including, without limitation, the Existing ABL Lenders and the Existing ABL Agent under the Existing ABL Loan Agreement and the Bank Product Providers under the Existing ABL Loan Agreement in each case solely in their capacities as such and not in any other capacity.

"Existing ABL Loan Agreement" has the meaning assigned to that term in the Recitals.

"Existing ABL Lender" has the meaning assigned to that term in the Recitals.

"Existing ABL Obligations" means all Obligations outstanding under the Existing ABL Loan Agreement and the other Loan Documents (as defined in the Existing ABL Loan Agreement), including any Bank Products (as defined in the Existing ABL Loan Agreement) but excluding any DIP ABL Roll-Up Obligations. "Existing ABL Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding (including the Bankruptcy Cases) in accordance with the rate specified in the relevant Existing ABL Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"Existing Closing Date" means April 9, 2014.

"Existing Intercreditor Agreement" has the meaning assigned to that term in the Recitals.

"Existing Netherlands ABL Agent" has the meaning assigned to that term in the Preamble to this Agreement.

"Existing Term Agent" has the meaning assigned to that term in the Preamble to this Agreement.

"Existing Term Claimholders" means, at any relevant time, the holders of Existing Term Obligations at that time, including the Existing Term Lenders and the Existing Term Agent in each case solely in their capacities as such and not in any other capacity.

"Existing Term Loan Agreement" has the meaning assigned to that term in the Recitals.

"Existing Term Lenders" has the meaning assigned to that term in the Recitals.

"Existing Term Obligations" means, at any relevant time, all Obligations outstanding under the Existing Term Loan Agreement and the other Loan Documents (as defined in the Existing Term Loan Agreement), including, without limitation, all Loan Obligations and Secured Obligations (each as defined in the Existing Term Loan Agreement) but excluding any DIP Term Roll-Up Obligations. "Existing Term Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding (including the Bankruptcy Cases) in accordance with the rate specified in the Existing Term Loan Agreement or other relevant Loan Document (as defined in the Existing Term Loan Agreement), whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"Financial Assets" means all present and future "financial assets" (as defined in Article 9 of the UCC).

"Financing Order" means, as applicable under the circumstances, (i) collectively, the order of the Bankruptcy Court entered in the Bankruptcy Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which order is in effect and not stayed, together with all extensions, modifications, and amendments thereto, which, among other matters but not by way of limitation, authorizes, on an interim basis, Debtors to execute and perform under the terms of the ABL Loan Documents relating to the DIP ABL Loan Agreement and the Term Loan Documents relating to the DIP Term Loan Documents or (ii) collectively, the order of the Bankruptcy Court entered in the Bankruptcy Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order is in effect and not stayed, together with all extensions, modifications and amendments thereto, which, among other matters, authorizes the Debtors to obtain credit, incur (or guaranty) Debt, and grant Liens under the ABL Loan Documents relating to the DIP ABL Loan Agreement and the Term Loan Documents relating to the DIP Term Loan Documents, as the case may be, provides for the super priority of the ABL Agent's, Existing Term Agent's, DIP Term Agent's, ABL Lenders' and Term Lenders' claims (under the DIP ABL Loan Agreement and DIP Term Loan Agreement, respectively) and authorizes the use of cash collateral.

"Foreign Subsidiary" means any Subsidiary of the Company that is not organized under the laws of the United States, any state thereof or the District of Columbia.

"Foreign Subsidiary Assets" means any assets or property of whatever kind and nature of any Foreign Subsidiary, excluding, for the avoidance of doubt, Capital Stock of a Foreign Subsidiary owned by a Debtor.

"General Intangibles" means all present and future "general intangibles" (as defined in Article 9 of the UCC).

"Governmental Authority" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

"Grantors" means Holdings, the Company, each Company Subsidiary and each other Person that has or may from time to time hereafter execute and deliver an ABL Security Document or a Term Security Document, as a grantor of a Lien (or the equivalent thereof).

"Holdings" has the meaning assigned to that term in the Preamble to this Agreement.

"Indebtedness" means and includes all "Indebtedness," or any similar term within the meaning of the ABL Loan Agreement or the Term Loan Agreement.

"Initial Access Date" has the meaning assigned to that term in the definition of the term "Access Period."

"Insolvency or Liquidation Proceeding" means:

- (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor, including the Bankruptcy Cases;
- (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, suspension of payments or other similar case or proceeding (including any insolvency proceeding pursuant to Article 2166 of the Mexican Federal Civil Code (*Código Civil Federal*) or its correlative provisions of the Civil Codes of the States that comprises Mexico or Article 9 of the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*) (or any successor provision).with respect to any Grantor or with respect to a material portion of their respective assets;
- (c) any composition of liabilities or similar arrangement relating to any Grantor, whether or not under a court's jurisdiction or supervision;
- (d) any liquidation, dissolution, reorganization or winding up of any Grantor, whether voluntary or involuntary, whether or not under a court's jurisdiction or supervision, and whether or not involving insolvency or bankruptcy; or
- (e) any general assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor.

"Instruments" means all present and future "instruments" (as defined in Article 9 of the UCC).

"Intellectual Property" means, all of the following in any jurisdiction throughout the world: (a) patents, patent applications and inventions, including all renewals, extensions, combinations, divisions, or reissues thereof, ("**Patents**"); (b) trademarks, service marks, trade names, trade dress, logos, internet domain names and other business identifiers, together with the goodwill symbolized by any of the foregoing, and all applications, registrations, renewals and extensions thereof, ("**Trademarks**"); (c) copyrights and all works of authorship including all registrations, applications, renewals, extensions and reversions thereof, ("**Copyrights**"); (d) all computer software, source code, executable code, data, databases and documentation thereof; (e) all trade secret rights in information, including trade secret rights in any formula, pattern, compilation, program, device, method, technique, or process, that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; (f) all other intellectual property or proprietary rights in any discoveries, concepts, ideas, research and development, know-how, formulae, patterns, inventions, compilations, compositions, manufacturing and production processes and techniques, program, device, method, technique, technical data, procedures, designs, recordings, graphs, drawings, reports, analyses, specifications, databases, and other proprietary or confidential information, including customer lists, supplier lists, pricing and cost information, business and marketing plans and proposals and advertising and promotional materials; and (g) all rights to sue at law or in equity for any infringement or other impairment or violation thereof and all products and proceeds of the foregoing.

"Inventory" means all now owned and hereafter existing or acquired inventory, as defined in Article 9 of the UCC.

"Investment Property" means all present and future "investment property" (as defined in Article 9 of the UCC), including, without limitation, all Capital Stock of all Grantors (other than Holdings) and all Subsidiaries of the Grantors.

"Letter of Credit Rights" means all present and future "letter of credit rights" (as defined in Article 9 of the UCC).

"Lien" means any mortgage, pledge, hypothec, hypothecation, assignment, deposit arrangement, trust agreement, encumbrance, lien (statutory or other), charge, seizure or other security interest or any other security agreement (including, without limitation, any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing). For purposes of this Agreement, a Lien shall also mean the rights and/or interests of any ABL Agent or the DIP Term Agent as beneficiaries (*fideicomisarios*) in any Mexico Security Trust, the proceeds thereof, any Specified Mexico Collateral and proceeds thereof. Any assets in any Mexico Security Trust and any Specified Mexico Collateral shall be treated as ABL Priority Collateral for all purposes of this Agreement, and for all purposes of this Agreement, until the Discharge of ABL Obligations, (x) ABL Agent shall be treated as the Prior Lien Agent with respect to any assets in any Mexico Security Trust and any Specified Mexico Collateral and may issue instructions to the Mexico Security Trustee for any Mexico Security Trust or the Specified Mexico Collateral Agent (and immediately after the Discharge of ABL Obligations, the DIP Term Agent shall be treated as the Prior Lien Agent with respect to any assets in any Mexico Security Trust or Specified Mexico Collateral and may issue instructions to the Mexico Security Trustee for any Mexico Security Trust and the Specified Mexico Collateral Agent), (y) all transfers from any Mexico Security Trust for the benefit of any Claimholder shall be made to ABL Agent, for the benefit of all of the Claimholders, and applied in accordance with Section 4.1(a) and, until the Discharge of ABL Obligations, the Term Agents may not issue any instruction or other direction to the Mexico Security Trustee for any Mexico Security Trust without the prior written consent of ABL Agent (and any references in Sections 3.1 and 5.1(a) and Article VI to any actions of the Prior Lien Agent shall be deemed to include the actions of the Mexico Security Trustee for any Mexico Security Trust to the extent such Mexico Security Trustee is acting on the instruction of ABL Agent) and (z) until the Discharge of ABL Obligations, (A) all proceeds of any sale or other disposition of any Specified Mexico Collateral received by Specified Mexico Collateral Agent shall be delivered by the Specified Mexico Collateral Agent to ABL Agent, for the benefit of all of the Specified Mexico Collateral Claimholders, and applied in accordance with Section 4.1(a) and (B) the Term Agents may not issue any instruction or other direction to the Specified Mexico Collateral Agent without the prior written consent of ABL Agent (and any references in Sections 3.1 and 5.1(a) and Article VI to any actions of the Prior Lien Agent shall be deemed to include the actions of Specified Mexico Collateral Agent to the extent Specified Mexico Collateral Agent is acting on the instruction of ABL Agent).

"Mexico" means the United Mexican States (*Estados Unidos Mexicanos*).

"Mexico Security Trust" means any Mexican law-governed Irrevocable Transfer of Title and Security Trust Agreement with Reversion Right (*Contrato de Fideicomiso Irrevocable Traslativo de Dominio y de Garantía con Derechos de Reversión*) (or any other form of security trust under the laws of Mexico) into which any assets or other property of any Mexico Subsidiary, or Capital Stock issued by any Mexico Subsidiary issued to any Grantor, are transferred to any Mexico Security Trustee for the benefit of ABL Agent, on behalf of the ABL Claimholders and/or DIP Term Agent, on behalf of the DIP Term Claimholders.

"Mexico Security Trustee" means any Mexican banking institution acceptable to the ABL Agent, acting as trustee under the Mexico Security Trust.

"Mexico Subsidiary" means each Foreign Subsidiary organized under the laws of Mexico (except for Crisa Libbey, S.A. de C.V.).

"Money" means all present and future "money" (as defined in Article 9 of the UCC).

"Mortgaged Premises" means any real property which shall now or hereafter be subject to a Term Mortgage and/or an ABL Mortgage.

"New Agent" has the meaning assigned to that term in Section 5.5.

"New Debt Notice" has the meaning assigned to that term in Section 5.5.

"Non-Conforming Plan of Reorganization" means any Plan of Reorganization whose provisions are inconsistent with the provisions of this Agreement, including any plan of reorganization that purports to re-order (whether by subordination, invalidation, or otherwise) or otherwise disregard, in whole or part, the provisions of Article II (including the Lien priorities of Section 2.1), the provisions of Article IV, or the provisions of Article VI, unless such Plan of Reorganization has been accepted by the voluntary required vote of each class of Priority Claimholders for such class to have approved such Plan of Reorganization.

"Obligations" means all present and future loans, advances, liabilities, obligations, covenants, duties, and debts from time to time owing by any Grantor to any agent or trustee (including any Agent), the ABL Claimholders, the Term Claimholders or any of them or their respective Affiliates, arising from or in connection with any of the ABL Loan Documents or any of the Term Loan Documents, whether for principal, interest or payments for early termination, whether or not evidenced by any note, or other instrument or document, whether arising from an extension of credit, opening of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, as principal or guarantor, and including all principal, interest, charges, expenses, fees, attorneys' fees, filing fees and any other sums chargeable to the Grantors, including, without limitation, the "Obligations" and "Secured Obligations" as defined in the ABL Loan Agreement and the "Loan Obligations" and "Secured Obligation" as defined in each of the DIP Term Loan Agreement and Existing Term Loan Agreement.

"Permitted Refinancing" means any Refinancing the governing documentation of which constitutes Permitted Refinancing Agreements.

"Permitted Refinancing Agreements" means, with respect to the Existing ABL Loan Agreement, the DIP ABL Loan Agreement, the Existing Term Loan Agreement or the DIP Term Loan Agreement, any credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to increase, replace (whether upon or after termination or otherwise), refinance or refund in whole or in part the Obligations outstanding under the Existing ABL Loan Agreement, the DIP ABL Loan Agreement, the Existing Term Loan Agreement or the DIP Term Loan Agreement, as applicable, whether or not such increase, replacement, refinancing or refunding occurs (i) with the original parties thereto, (ii) on one or more separate occasions or (iii) simultaneously or not with the termination or repayment of the Existing ABL Loan Agreement, the DIP ABL Loan Agreement, the Existing Term Loan Agreement or the DIP Term Loan Agreement, or any other agreement or instrument referred to in this clause, unless such agreement or instrument expressly provides that it is not intended to be and is not a Permitted Refinancing Agreement, as such financing documentation may be amended, restated, supplemented or otherwise modified from time to time and that would not be prohibited by Section 5.3(c), Section 5.3(d) or Section 5.3(e), as applicable.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Petition Date" has the meaning assigned to that term in the Recitals.

"Plan of Reorganization" means any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement proposed in or in connection with any Insolvency or Liquidation Proceeding.

"Pledged Collateral" has the meaning set forth in Section 5.4(a).

"Prior Lien Agent" shall mean:

(a) as it relates to the ABL Agent and the ABL Claimholders with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, each of the Term Agents; and

(b) as it relates to the Term Agent and the Term Claimholders with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral), any assets in any Mexico Security Trust and any Specified Mexico Collateral, prior to the Discharge of ABL Obligations, each of the ABL Agents.

"Prior Lien Claimholders" shall mean:

(a) as it relates to the ABL Claimholders with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, the Term Claimholders; and

(b) as it relates to the Term Claimholders with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral) and any assets in any Mexico Security Trust, prior to the Discharge of ABL Obligations, the ABL Claimholders.

"Prior Lien Collateral" shall mean with respect to any Person, all Collateral with respect to which (and only for so long as) such Person is a "Prior Lien Claimholder" as provided in the definition thereof.

"Prior Lien Documents" shall mean:

(a) as it relates to the ABL Claimholders with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, the Term Loan Documents; and

(b) as it relates to the Term Claimholders with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral) prior to the Discharge of ABL Obligations, the ABL Loan Documents.

"Prior Lien Obligations" shall mean:

(a) as it relates to the ABL Obligations with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, the Term Obligations; and

(b) as it relates to the Term Obligations with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral) and any assets in any Mexico Security Trust, prior to the Discharge of ABL Obligations, the ABL Obligations.

"Proceeds" means all "proceeds" (as defined in Article 9 of the UCC), including any payment or property received on account of any claim secured by Collateral in any Insolvency or Liquidation Proceeding.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by the Company or any Grantor in any real property.

"Ratable Share" means, with respect to each ABL Claimholder (other than the ABL Agent) and each DIP Term Claimholder (other than the DIP Term Agent) at any time, a percentage equal to a fraction, (a) the numerator of which is the sum of such Claimholder's unused commitments and the outstanding principal amount of such Claimholder's loans under each ABL Loan Agreement or the DIP Term Loan Agreement, as applicable, and (b) the denominator of which is sum of the aggregate unused commitments and the aggregate outstanding principal amount of loans of all ABL Claimholders and DIP Term Claimholders under the ABL Loan Agreements and the DIP Term Loan Agreement; provided, that in the event the Ratable Share is calculated based on an act taken (or not taken) by the Specified Mexico Collateral Agent at the direction of only one or more of the ABL Claimholders, each "Ratable Share" hereunder shall be computed based solely on the unused commitments and outstanding loans under the ABL Loan Agreements (such that each DIP Term Claimholder's Ratable Share is 0%, and the sum of the Ratable Shares of all ABL Claimholders (other than the ABL Agent) totals 100%), and in the event the Ratable Share is calculated based on an act taken (or not taken) by the Specified Mexico Collateral Agent at the direction of only one or more of the DIP Term Claimholders, each "Ratable Share" hereunder shall be computed based solely on the unused commitments and outstanding loans under the DIP Term Loan Agreement (such that each ABL Claimholder's Ratable Share is 0%, and the sum of the Ratable Shares of all DIP Term Claimholders (other than the DIP Term Agent) totals 100%).

"Records" means all present and future "records" (as defined in Article 9 of the UCC).

"Recovery" has the meaning set forth in Section 6.4.

"Refinance" means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other indebtedness, in exchange or replacement for, such Indebtedness, in any case in whole or in part. "Refinanced" and "Refinancing" shall have correlative meanings.

"Security" means all present and future "Securities" (as defined in Article 9 of the UCC).

"Security Entitlements" means all present and future "security entitlements" (as defined in Article 9 of the UCC).

"Securities Accounts" means all present and future "securities accounts" (as defined in Article 8 of the UCC), including all monies, "uncertificated securities," and "securities entitlements" (as defined in Article 8 of the UCC) contained therein.

"Specified Mexico Collateral" means, collectively, all assets and properties of each Mexico Subsidiary and/or any Grantor subject to Liens created (or purported to be created) pursuant to any Specified Mexico Collateral Document to secure Specified Mexico Collateral Obligations, whether or not any such Liens are voided, avoided, invalidated, lapsed or unperfected; provided, that, Specified Mexico Collateral shall not include any assets and properties of any Mexico Subsidiary and/or Grantor subject to the Mexico Security Trust (it being understood that each of the ABL Agent and DIP Term Agent shall act without the Specified Mexico Collateral Agent in respect of the Mexico Security Trust).

"Specified Mexico Collateral Agent" means Cortland Capital Market Services LLC, in its capacity as the collateral agent for the Specified Mexico Collateral Claimholders under the Specified Mexico Collateral Documents, together with its successors and assigns in such capacity.

"Specified Mexico Collateral Agent Indemnified Liabilities" has the meaning assigned to that term in Section 8.4.

"Specified Mexico Collateral Agent Related Persons" has the meaning assigned to that term in Section 8.4.

"Specified Mexico Collateral Documents" means, collectively, the Specified Mexico Equity Interest Pledge Agreement and the Specified Mexico Non Possessory Pledge.

"Specified Mexico Collateral Obligations" means (a) the ABL Obligations, (b) the DIP Term Obligations, and (c) all other obligations of the Grantors in respect of, or arising under, the Specified Mexico Collateral Documents, plus interest and all fees, costs, charges and expenses, including legal fees and expenses to the extent authorized under the ABL Loan Documents or Term Loan Documents, as applicable, in each case whether accrued or incurred before or after the commencement of an Insolvency or Liquidation Proceeding, and whether or not allowed or allowable in an Insolvency or Liquidation Proceeding.

"Specified Mexico Collateral Claimholders" means, collectively, (a) the Specified Mexico Collateral Agent, (b) the ABL Claimholders, and (c) the DIP Term Claimholders.

"Specified Mexico Equity Interest Pledge Agreement" means, collectively, one or more Mexican law-governed Non-Possessory Equity Pledge Agreements (*Contratos de Prenda sin Transmisión de Posesión sobre Partes Sociales*), in form and substance satisfactory to the Specified Mexico Collateral Agent, the ABL Agent and the DIP Term Agent pursuant to which the applicable Grantors, as pledgors, have pledged and granted a first priority Lien in favor of the Specified Mexico Collateral Agent (or any other designated Person hereunder), as pledgee, with the consent and acknowledgement of the corresponding Mexico Loan Guarantor, over all of the present and future assets (*Bienes Pignorados*, as defined therein), and given as security for the Specified Mexico Collateral Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Specified Mexico Non-Possessory Pledge Agreement" means, collectively, one or more Mexican law-governed Non-Possessory Pledge Agreements (*Contratos de Prenda sin Transmisión de Posesión*), in form and substance satisfactory to the Specified Mexico Collateral Agent, the ABL Agent and the DIP Term Agent pursuant to which the corresponding Mexico Subsidiary, as pledgors, have pledged and granted a first priority Lien in favor of the Specified Mexico Collateral Agent (or any other designated Person hereunder), as pledgee, over all or substantially all of the present and future assets (*Bienes Pignorados*, as defined therein), and given as security for the Specified Mexico Collateral Obligations, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Subordinated Lien Agent" shall mean:

(a) with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral) and assets in any Mexico Security Trust, prior to the Discharge of ABL Obligations, the Term Agent; and

(b) with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, the ABL Agent.

"Subordinated Lien Claimholders" shall mean:

(a) with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral) and assets in any Mexico Security Trust, prior to the Discharge of ABL Obligations, the Term Claimholders; and

(b) with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, the ABL Claimholders.

"Subordinated Lien Collateral" shall mean with respect to any Person, all Collateral with respect to which (and only for so long as) such Person is a "Subordinated Lien Claimholder" as provided in the definition thereof.

"Subordinated Lien Documents" shall mean:

(a) with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral) prior to the Discharge of ABL Obligations, the Term Loan Documents; and

(b) with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, the ABL Loan Documents.

"Subordinated Lien Obligations" shall mean:

(a) with respect to all matters relating to the ABL Priority Collateral (but not the Term Priority Collateral) and assets in any Mexico Security Trust, prior to the Discharge of ABL Obligations, the Term Obligations; and

(b) with respect to all matters relating to the Term Priority Collateral (but not the ABL Priority Collateral) prior to the Discharge of Term Obligations, the ABL Obligations.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof.

"Supporting Obligations" means all present and future "supporting obligations" (as defined in Article 9 of the UCC).

"Term Agent" means, individually or collectively, the Existing Term Agent, the DIP Term Agent and any successor or other agent under any Term Loan Agreement.

"Term Claimholders" means, at any relevant time, the holders of Term Obligations at that time, including the Term Lenders and the Term Agents in each case solely in their capacities as such and not in any other capacity.

"Term Collateral" means any and all of the assets and property of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Term Obligations.

"Term Default" means an "Event of Default" (as defined in the DIP Term Loan Agreement or any substantially similar term in a Refinancing).

"Term General Intangibles" means all General Intangibles of Holdings, the Company and the Grantors that are Domestic Subsidiaries related to the other Term Priority Collateral.

"Term Lenders" means the Existing Term Lenders, the DIP Term Lenders and any other "Lenders" under and as defined in the Term Loan Agreement or any other Person which extends credit under the Term Loan Agreement, in each case solely in their capacities as such and not in any other capacity.

"Term Loan Agreement" means collectively, (a) the Existing Term Loan Agreement, (b) the DIP Term Loan Agreement and (c) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation (other than ABL Obligations) that has been incurred to increase, replace, refinance or refund in whole or in part the Obligations outstanding under the Existing Term Loan Agreement, the DIP Term Loan Agreement or any other agreement or instrument referred to in this clause which (I) is designated as a "Term Loan Agreement" by (x) if any other Term Loan Agreement is then in effect, the Term Agent thereunder (and, so long as a Term Default has not occurred and is continuing at the time of such designation, the Company) or (y) if no other Term Loan Agreement is then in effect, the Company, and (II) the Term Agent for such agreement shall have executed the Additional Joinder Agreement (and delivered a copy thereof to ABL Agent and each other Term Agent) agreeing to be bound hereby on the same terms applicable to the applicable Term Agent, whether or not such increase, replacement, refinancing or refunding occurs (i) with the original parties thereto, (ii) on one or more separate occasions or (iii) simultaneously or not with the termination or repayment of the Existing Term Loan Agreement, the DIP Term Loan Agreement or any other agreement or instrument referred to in this clause, unless such agreement or instrument is not a Permitted Refinancing Agreement. Any reference to the Term Loan Agreement hereunder shall be deemed a reference to any Term Loan Agreement then in existence.

"Term Loan Documents" means the Term Loan Agreement and the "Loan Documents" (as defined in each Term Loan Agreement), the Financing Order and each of the other agreements, documents and instruments executed pursuant thereto, and any other document or instrument executed or delivered at any time in connection with the Term Loan Agreement, including any intercreditor or joinder agreement among holders of Term Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, supplemented, modified, renewed, extended or Refinanced from time to time in accordance with the provisions of this Agreement.

"Term Mortgages" means a collective reference to the Financing Order and each mortgage, deed of trust and other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Term Obligations or under which rights or remedies with respect to any such Liens are governed.

"Term Obligations" means, at any relevant time, all Obligations outstanding under the Term Loan Agreement and the other Term Loan Documents. "Term Obligations" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding (including the Bankruptcy Cases) in accordance with the rate specified in the relevant Term Loan Document, whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"Term Priority Collateral" means all now owned or hereafter acquired Term Collateral that constitutes (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute Term Priority Collateral):

- (a) Real Estate Assets of Holdings, the Company and the Grantors that are Domestic Subsidiaries;
- (b) Equipment of Holdings, the Company and the Grantors that are Domestic Subsidiaries;
- (c) Term General Intangibles;
- (d) Letter of Credit Rights of Holdings, the Company and the Grantors that are Domestic Subsidiaries arising out of, or related to, or derivative of any of the property or interests in property described in this definition;
- (e) Instruments, books and records, Supporting Obligations and Commercial Tort Claims, in each case, of Holdings, the Company and the Grantors that are Domestic Subsidiaries and to the extent arising out of, or related to, or derivative of, the property or interests described in this definition;
- (f) all other Collateral of Holdings, the Company and the Grantors that are Domestic Subsidiaries other than ABL Priority Collateral;
- (g) all Avoidance Actions other than Avoidance Actions against any ABL Claimholder; and
- (h) all collateral security and guarantees with respect to any of the foregoing and, subject to Section 3.5, all proceeds, products, substitutions, replacements, accessions, cash, Money, insurance proceeds, Instruments, Securities, Security Entitlements, Financial Assets and Deposit Accounts received as proceeds of any of the foregoing, but excluding proceeds of ABL Priority Collateral (collectively, "Term Priority Proceeds").

For the avoidance of doubt, it is hereby acknowledged and agreed that the assets or property of any Foreign Subsidiary (regardless of whether such assets or property are or have been pledged to the ABL Agent under the ABL Loan Agreement) shall constitute ABL Priority Collateral and shall not be included as Term Priority Collateral; provided, that any such ABL Priority Collateral shall also constitute Term Collateral securing the DIP Term Obligations.

"Term Security Documents" means the Financing Order and any other agreement, document or instrument pursuant to which a Lien is granted securing any Term Obligations or under which rights or remedies with respect to such Liens are governed.

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

1.2. Terms Generally. The definitions of terms in this Agreement 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, modified, renewed or extended;
- (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 Sections or Articles shall be construed to refer to Sections or Articles of this Agreement;
- (e) all uncapitalized terms have the meanings, if any, given to them in the UCC, as now or hereafter enacted in the State of New York (unless otherwise specifically defined herein);
- (f) 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;
- (g) any reference herein to a Person in a particular capacity or capacities excludes such Person in any other capacity or individually;
- (h) any reference herein to any law shall be construed to refer to such law as amended, modified, codified, replaced, or re-enacted, in whole or in part, and in effect on the pertinent date; and

(i) in the compilation of periods of time hereunder from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to, but not through."

II. LIEN PRIORITIES.

2.1. **Relative Priorities.** Irrespective of the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the ABL Obligations or the Term Obligations (including, in each case, irrespective of whether any such Lien is granted (or secures Obligations relating to the period) before or after the commencement of any Insolvency or Liquidation Proceeding (including the Bankruptcy Cases)) and notwithstanding any provision of any UCC, or any other applicable law, or the ABL Loan Documents or the Term Loan Documents or any defect or deficiencies in, or failure to attach or perfect, the Liens securing the ABL Obligations or the Term Obligations or any other circumstance whatsoever, each ABL Agent, on behalf of the applicable ABL Claimholders, each Term Agent, on behalf of the applicable Term Claimholders and the Specified Mexico Collateral Agent, on behalf of the Specified Mexico Collateral Claimholders, each hereby agrees that:

(a) any Lien of the Prior Lien Agent on the ABL Priority Collateral securing Prior Lien Obligations, whether such Lien is now or hereafter held by or on behalf of the Prior Lien Agent or any other Prior Lien Claimholder or any other agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any Subordinated Lien Obligations; and

(b) any Lien of the Prior Lien Agent on the Term Priority Collateral securing Prior Lien Obligations, whether such Lien is now or hereafter held by or on behalf of the Prior Lien Agent, any other Prior Lien Claimholder or any other agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects to all Liens on the Term Priority Collateral securing any Subordinated Lien Obligations.

2.2. **Prohibition on Contesting Liens.** Each Term Agent, on behalf of the applicable Term Claimholders, and each ABL Agent, on behalf of the applicable ABL Claimholders, consents to the granting of Liens in favor of the other Agents (and, with respect to any assets in any Mexico Security Trust, the Mexico Security Trustee for such Mexico Security Trust on behalf of the Agents (other than the Existing Term Agent), and with respect to any Specified Mexico Collateral, the Specified Mexico Collateral Agent on behalf of the Specified Mexico Collateral Claimholders) to secure the ABL Obligations and the Term Obligations (other than the granting of Liens on the Foreign Subsidiary Assets in favor of the Existing Term Agent to secure the Existing Term Obligations), as applicable, and agrees that no Claimholder will be entitled to, and it will not (and shall be deemed to have irrevocably, absolutely, and unconditionally waived any right to), contest (directly or indirectly) or support (directly or indirectly) any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding): (a) the attachment, perfection, priority, validity or enforceability of any Lien in the Collateral held by or on behalf of any of the ABL Claimholders to secure the payment of the ABL Obligations or any of the Term Claimholders to secure the payment of the Term Obligations, (b) the priority, validity or enforceability of the ABL Obligations or the Term Obligations, including the allowability or priority of the ABL Obligations or the Term Obligations, as applicable, in any Insolvency or Liquidation Proceeding, or (c) the validity or enforceability of the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of each ABL Agent, on behalf of the applicable ABL Claimholders or each Term Agent, on behalf of the applicable Term Claimholders to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the Obligations as provided in Sections 2.1, 3.1, 3.2 and 6.1.

2.3. **No New Liens.** During the term of this Agreement, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against one or more of the Company or any other Grantor, the parties hereto agree, subject to Article VI, that the Company shall not, and shall not permit any other Grantor to:

(a) grant or permit any additional Liens on any asset or property to secure any Term Obligations unless it has granted or concurrently grants a Lien on such asset or property to secure the ABL Obligations with the respective priorities required by Section 2.1;

(b) grant or permit any additional Liens on any asset or property to secure any ABL Obligations unless it has granted or concurrently grants a Lien on such asset or property to secure the Term Obligations with the respective priorities required by Section 2.1.

Notwithstanding the foregoing, it is acknowledged and agreed that (x) the Collateral Agents (other than the Existing Term Agent) may be granted Liens on Foreign Subsidiary Assets (including assets in any Mexico Security Trust and the Specified Mexico Collateral) that secure the ABL Obligations, DIP Obligations and Specified Mexico Collateral Obligations that have not been granted to secure the Existing Term Obligations and (y) DIP Term Funding Account and all identifiable proceeds of loans under the DIP Term Loan Agreement funded on or after the date hereof and deposited in the DIP Term Funding Account shall serve as collateral solely for the DIP Term Obligations and not for the ABL Obligations or the Existing Term Obligations.

To the extent any additional Liens are granted on any asset or property in contravention of this Section 2.3 for any reason, without limiting any other rights and remedies available hereunder, each ABL Agent, on behalf of the applicable ABL Claimholders, each Term Agent, on behalf of the applicable Term Claimholders, and Specified Mexico Collateral Agent, on behalf of the Specified Mexico Collateral Claimholders agree that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

2.4. **Similar Liens and Agreements.** The parties hereto agree that it is their intention that the ABL Collateral and the Term Collateral be identical except as provided in Article VI and as otherwise provided herein. In furtherance of the foregoing and of Section 9.8, the parties hereto agree, subject to the other provisions of this Agreement, upon request by any ABL Agent or any Term Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Collateral and the Term Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Loan Documents and the Term Loan Documents.

III. EXERCISE OF REMEDIES; ENFORCEMENT.

3.1. Restrictions on the Subordinated Lien Agents and the Subordinated Lien Claimholders with respect to ABL Priority Collateral.

(a) Until the Discharge of Prior Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, the Subordinated Lien Agents and the other Subordinated Lien Claimholders:

(i) will not exercise or seek to exercise (but instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived), any rights, powers, or remedies with respect to any ABL Priority Collateral (including (A) any right of set-off or any right under any Account Agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which any Subordinated Lien Agent or any other Subordinated Lien Claimholder is a party or the right to notify any account debtor to make payment as directed by such Subordinated Lien Claimholder, (B) any right to undertake self-help re-possession or non-judicial disposition of any ABL Priority Collateral (including any partial or complete strict foreclosure), (C) any Enforcement action, and/or (D) any right to institute, prosecute, or otherwise maintain any action or proceeding with respect to such rights, powers or remedies (including any action of foreclosure));

(ii) will not, directly or indirectly, contest, protest or object to or hinder any judicial or non-judicial foreclosure proceeding or action (including any partial or complete strict foreclosure) brought by the Prior Lien Agent or any Prior Lien Claimholder relating to the ABL Priority Collateral or any other exercise by the Prior Lien Agent or any other Prior Lien Claimholder of any other rights, powers and remedies relating to the ABL Priority Collateral, including any sale, lease, exchange, transfer, or other disposition of the ABL Priority Collateral, whether under the Prior Lien Documents, applicable law, or otherwise;

(iii) will not object to the waiver or forbearance by the Prior Lien Agent or any Prior Lien Claimholders from bringing or pursuing any Enforcement action or other exercise of rights or remedies with respect to the ABL Priority Collateral;

(iv) except as may be permitted in Section 3.1(c) and 3.4, irrevocably, absolutely, and unconditionally waive any and all rights the Subordinated Lien Agent or the Subordinated Lien Claimholders may have as a junior lien creditor or otherwise to object (and seek or be awarded any relief of any nature whatsoever based on any such objection) to the manner in which the Prior Lien Agent or the Prior Lien Claimholders (A) enforce or collect (or attempt to collect) the Prior Lien Obligations or (B) realize or seek to realize upon or otherwise enforce the Liens in and to the ABL Priority Collateral securing the Prior Lien Obligations, regardless of whether any action or failure to act by or on behalf of the Prior Lien Agent or Prior Lien Claimholders is adverse to the interest of the Subordinated Lien Agent or the Subordinated Lien Claimholders and waive any claims that may be had against any Prior Lien Agent and the Prior Lien Claimholders arising out of any actions which they take or omit to take (including without limitation, actions with respect to the creation, perfection or continuation of Liens on any ABL Priority Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the ABL Priority Collateral and actions with respect to the collection of any claim for all or any part of the Prior Lien Obligations from any account debtor, guarantor or any other Person) or the valuation, use, protection or release of any Collateral for the Prior Lien Obligations. Without limiting the generality of the foregoing, to the maximum extent permitted by law, the Subordinated Lien Agent and the other Subordinated Lien Claimholders shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right to object (and seek or be awarded any relief of any nature whatsoever based on any such objection), at any time prior or subsequent to any disposition of any of the ABL Priority Collateral, on the ground(s) that any such disposition of ABL Priority Collateral (x) would not be or was not "commercially reasonable" within the meaning of any applicable UCC and/or (y) would not or did not comply with any other requirement under any applicable UCC or under any other applicable law governing the manner in which a secured creditor (including one with a Lien on real property) is to realize on its collateral;

(v) acknowledge and agree that no covenant, agreement or restriction contained in the Subordinated Lien Documents shall be deemed to restrict in any way the rights and remedies of the Prior Lien Agent or the Prior Lien Claimholders with respect to the ABL Priority Collateral as set forth in this Agreement and the Prior Lien Documents;

(vi) it will not attempt to direct the Prior Lien Agent or any of the Prior Lien Claimholders to exercise any right, remedy or power with respect to the ABL Priority Collateral or exercise any consent to the exercise by the Prior Lien Agent or any of the Prior Lien Claimholders of any right, remedy or power with respect to the ABL Priority Collateral;

(vii) it will not institute any suit or assert in any suit, Insolvency or Liquidation Proceeding or other proceeding any claim against the Prior Lien Agent or any of the Prior Lien Claimholders seeking damages or other relief by way of specific performance, instructions or otherwise with respect to, and neither the Prior Lien Agent nor any of the Prior Lien Claimholders will be liable for, any action taken or omitted to be taken by any of them with respect to the ABL Priority Collateral; and

(viii) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement;

provided, however, that, in the case of (i), (ii) and (iii) above, the Liens granted to secure the Subordinated Lien Obligations of the Subordinated Lien Claimholders shall attach to any Proceeds resulting from actions taken by the Prior Lien Agent or any Prior Lien Claimholder with respect to the ABL Priority Collateral in accordance with the respective priorities set forth in Section 2.1 of this Agreement after application of such Proceeds to the extent necessary to meet the requirements of a Discharge of Prior Lien Obligations.

(b) Until the Discharge of Prior Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, the Prior Lien Agent and the other Prior Lien Claimholders shall have the right to enforce rights, exercise remedies (including set-off and, except as provided in Section 6.8, the right to credit bid their debt) and, in connection therewith (including any Enforcement) make determinations regarding the release, disposition, or restrictions with respect to the ABL Priority Collateral without any consultation with or the consent of any Subordinated Lien Agent or any Subordinated Lien Claimholder; provided, however, that the Liens securing the Subordinated Lien Obligations shall remain on the Proceeds (other than those applied to the Prior Lien Obligations in accordance with Section 4.1) of such ABL Priority Collateral released or disposed of subject to the relative priorities described in Section 2.1. In exercising rights, powers, and remedies with respect to the ABL Priority Collateral, the Prior Lien Agent and the Prior Lien Claimholders may enforce the provisions of the Prior Lien Documents and exercise rights, powers, and/or remedies thereunder and/or under applicable law or otherwise, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of the ABL Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction.

(c) Notwithstanding anything to the contrary contained herein, any Subordinated Lien Agent or Subordinated Lien Claimholder may:

(i) file a claim or statement of interest with respect to its Subordinated Lien Obligations; provided that an Insolvency or Liquidation Proceeding has been commenced by or against any Grantor;

(ii) take any action (not adverse to the priority status of the Liens on the ABL Priority Collateral, or the rights of the Prior Lien Agent or any of the Prior Lien Claimholders to exercise rights, powers, and/or remedies in respect thereof, including those under Article VI) in order to create, perfect, preserve or protect (but not enforce) its Lien on any of the ABL Priority Collateral;

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Subordinated Lien Claimholders, including any claims secured by the ABL Priority Collateral, if any, in each case in accordance with the terms of this Agreement;

(iv) file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either any Insolvency or Liquidation Proceeding or applicable non-bankruptcy law, in each case not inconsistent with the terms of this Agreement or applicable law (including the Bankruptcy Laws of any applicable jurisdiction) and, subject to the restrictions set forth in Section 3.2, any pleadings, objections, motions or agreements which assert rights or interests available to secured creditors solely with respect to the Term Priority Collateral;

(v) vote on any Plan of Reorganization, file any proof of claim, make other filings and make any arguments and motions (including in support of or opposition to, as applicable, the confirmation or approval of any Plan of Reorganization) that are, in each case, in accordance with the terms of this Agreement. Without limiting the generality of the foregoing or of the other provisions of this Agreement, any vote to accept, and any other act to support the confirmation or approval of, any Non-Conforming Plan of Reorganization shall be inconsistent with and accordingly, a violation of the terms of this Agreement, and the Prior Lien Agent shall be entitled to have any such vote to accept a Non-Conforming Plan of Reorganization changed and any such support of any Non-Conforming Plan of Reorganization withdrawn.

Each Subordinated Lien Agent, on behalf of the applicable Subordinated Lien Claimholders, agrees that no Subordinated Lien Claimholder will take or receive any ABL Priority Collateral (including Proceeds) in connection with the exercise of any right or remedy (including set-off) in its capacity as a creditor in violation of this Agreement. Without limiting the generality of the foregoing, unless and until the Discharge of Prior Lien Obligations has occurred, except as expressly provided in Section 6.7, the sole right of the Subordinated Lien Agents and the Subordinated Lien Claimholders with respect to the ABL Priority Collateral is to hold a Lien on such Collateral pursuant to the Subordinated Lien Documents for the period and to the extent granted therein and to receive a share of the Proceeds thereof, if any, in accordance with Section 4.1.

(d) Except as otherwise specifically set forth in Sections 3.1(a), 3.1(c)(v), 3.3, 3.4 and Article VI, any Subordinated Lien Agent or Subordinated Lien Claimholders with respect to the ABL Priority Collateral may exercise rights and remedies as unsecured creditors against any Grantor and, subject to Section 3.2, may exercise rights and remedies with respect to the Term Priority Collateral, in each case, in accordance with the terms of the Subordinated Lien Documents and applicable law; provided, however, that in the event that any Subordinated Lien Agent or any Subordinated Lien Claimholder becomes a judgment Lien creditor in respect of ABL Priority Collateral as a result of its enforcement of its rights as an unsecured creditor (or secured creditor with respect to the Term Priority Collateral) with respect to the Subordinated Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Prior Lien Obligations) as the other Liens on ABL Priority Collateral securing the Subordinated Lien Obligations are subject to this Agreement.

(e) Except as provided in Section 5.3(d), nothing in this Section 3.1 shall prohibit the receipt by any Subordinated Lien Agent or any other Subordinated Lien Claimholders of the required payments of interest, principal and other amounts owed in respect of the Subordinated Lien Obligations so long as such (1) amounts are not being paid out of the Proceeds from the assignment, transfer, sale or other disposition (other than in the ordinary course of business) of ABL Priority Collateral, unless such Proceeds are permitted to be applied to the payment of Subordinated Lien Obligations under the ABL Loan Agreement; and (2) receipt is not the direct or indirect result of the exercise by any Subordinated Lien Agent or any Subordinated Lien Claimholders of rights or remedies as a secured creditor (including set-off) with respect to ABL Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them. Nothing in this Section 3.1 impairs or otherwise adversely affects any rights or remedies the Prior Lien Agent or the Prior Lien Claimholders may have against the Grantors under the Prior Lien Documents.

3.2. Restrictions on the Subordinated Lien Agents and the Subordinated Lien Claimholders with respect to Term Priority Collateral.

(a) Until the Discharge of Prior Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, subject to the limited extent provided in Article VI, the Subordinated Lien Agents and the other Subordinated Lien Claimholders:

(i) will not exercise or seek to exercise (but instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived) any rights, powers, or remedies with respect to any Term Priority Collateral (including (A) any right to undertake self-help repossession or nonjudicial disposition of any Term Priority Collateral (including any partial or complete strict foreclosure), (B) any Enforcement action or (C) any right to institute, prosecute or otherwise maintain any action or proceeding with respect to such rights, powers, or remedies (including any action of foreclosure));

(ii) will not, directly or indirectly, contest, protest or object to or hinder any judicial or non-judicial foreclosure proceeding or action (including any partial or complete strict foreclosure) brought by the Prior Lien Agent or any other Prior Lien Claimholder relating to the Term Priority Collateral or any other exercise by the Prior Lien Agent or any other Prior Lien Claimholder of any rights, powers and remedies relating to the Term Priority Collateral, including any sale, lease, exchange, transfer, or other disposition of the Term Priority Collateral, whether under the Prior Lien Documents, applicable law, or otherwise, subject to any obligations of the Prior Lien Agent or the Prior Lien Claimholders under Sections 3.3 and 3.4;

(iii) will not object to the waiver or forbearance by the Prior Lien Agent or the Prior Lien Claimholders from bringing or pursuing any Enforcement action or other exercise of rights and remedies with respect to the Term Priority Collateral;

(iv) subject to Sections 3.2(c), 3.3 and 3.4, irrevocably, absolutely and unconditionally waive any and all rights the Subordinated Lien Agent and Subordinated Lien Claimholders may have as a junior lien creditor or otherwise to object (and seek or be awarded any relief of any nature whatsoever based on any such objection) to the manner in which the Prior Lien Agent or the Prior Lien Claimholders (a) enforce or collect (or attempt to collect) the Prior Lien Obligations or (b) realize or seek to realize upon or otherwise enforce the Liens in and to the Term Priority Collateral securing the Prior Lien Obligations, regardless of whether any action or failure to act by or on behalf of the Prior Lien Agent or Prior Lien Claimholders is adverse to the interest of the Subordinated Lien Claimholders and waive any claims that may be had against any Prior Lien Agent and the Prior Lien Claimholders arising out of any actions which they take or omit to take (including without limitation, actions with respect to the creation, perfection or continuation of Liens on any Term Priority Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Term Priority Collateral and actions with respect to the collection of any claim for all or any part of the Prior Lien Obligations from any account debtor, guarantor or any other Person) or the valuation, use, protection or release of any Collateral for the Prior Lien Obligations. Without limiting the generality of the foregoing, to the maximum extent permitted by law, the Subordinated Lien Agent and the other Subordinated Lien Claimholders shall be deemed to have hereby irrevocably, absolutely and unconditionally waived any right to object (and seek or be awarded any relief of any nature whatsoever based on any such objection), at any time prior to or subsequent to any disposition of any Term Priority Collateral, on the ground(s) that any such disposition of Term Priority Collateral (a) would not be or was not "commercially reasonable" within the meaning of any applicable UCC and/or (b) would not or did not comply with any other requirement under any applicable UCC or under any other applicable law governing the manner in which a secured creditor (including one with a Lien on real property) is to realize on its collateral;

(v) subject to Sections 3.3 and 3.4, acknowledge and agree that no covenant, agreement or restriction contained in any Subordinated Lien Document shall be deemed to restrict in any way the rights and remedies of the Prior Lien Agent or the Prior Lien Claimholders with respect to the Term Priority Collateral as set forth in this Agreement and the Prior Lien Documents;

(vi) it will not attempt to direct the Prior Lien Agent or any of the Prior Lien Claimholders to exercise any right, remedy or power with respect to the Term Priority Collateral or exercise any consent to the exercise by the Prior Lien Agent or any of the Prior Lien Claimholders of any right, remedy or power with respect to the Term Priority Collateral;

(vii) it will not institute any suit or assert in any suit, Insolvency or Liquidation Proceeding or other proceeding any claim against the Prior Lien Agent or any of the Prior Lien Claimholders seeking damages or other relief by way of specific performance, instructions or otherwise with respect to, and neither the Prior Lien Agent nor any of the Prior Lien Claimholders will be liable for, any action taken or omitted to be taken by any of them with respect to the Term Priority Collateral; and

(viii) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement;

provided, however, that in the case of (i), (ii) and (iii) above, the Liens granted to secure the Subordinated Lien Obligations of the Subordinated Lien Claimholders shall attach to any Proceeds resulting from actions taken by the Prior Lien Agent or Prior Lien Claimholder with respect to the Term Priority Collateral in accordance with this Agreement after application of such Proceeds to the extent necessary to meet the requirements of a Discharge of Prior Lien Obligations.

(b) Until the Discharge of Prior Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, the Prior Lien Agent and the Prior Lien Claimholders shall have the right to enforce rights, exercise remedies (including set-off and, except as provided in Section 6.8, the right to credit bid their debt) and make, in connection therewith (including Enforcements) determinations regarding the release, disposition, or restrictions with respect to the Term Priority Collateral without any consultation with or the consent of any Subordinated Lien Agent or any Subordinated Lien Claimholder subject to each Term Agent's and the Term Claimholders' obligations under Sections 3.3 and 3.4; provided, however, that the Liens securing the Subordinated Lien Obligations shall remain on the Proceeds (other than those properly applied to the Prior Lien Obligations in accordance with the Prior Lien Documents) of such Collateral released or disposed of subject to the relative priorities described in Section 2.1. In exercising rights, powers and remedies with respect to the Term Priority Collateral, the Prior Lien Agent and the Prior Lien Claimholders may enforce the provisions of the Prior Lien Documents and exercise rights, powers and/or remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion subject to each Term Agent's and the Term Claimholders' obligations under Sections 3.3 and 3.4. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of the Term Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights, powers and remedies of a secured creditor under the UCC and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction.

- (c) Notwithstanding anything to the contrary contained herein, any Subordinated Lien Agent and any Subordinated Lien Claimholder may:
- (i) file a claim or statement of interest with respect to the Subordinated Lien Obligations; provided that an Insolvency or Liquidation Proceeding has been commenced by or against any Grantor;
 - (ii) take any action (not adverse to the priority status of the Liens on the Term Priority Collateral, or the rights of the Prior Lien Agent or any of the Prior Lien Claimholders to exercise rights, powers and/or remedies in respect thereof, including those under Article VI) in order to create, perfect, preserve or protect (but, subject to the provisions of Sections 3.3, and 3.4, not enforce) its Lien on any of the Term Priority Collateral;
 - (iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Subordinated Lien Claimholders, including any claims secured by the Term Priority Collateral, if any, in each case in accordance with the terms of this Agreement;
 - (iv) file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either any Insolvency or Liquidation Proceeding or applicable non-bankruptcy law, in each case not inconsistent with the terms of this Agreement or applicable law (including the Bankruptcy Laws of any applicable jurisdiction) and, subject to Section 3.1, any pleadings, objections, motions or agreements which assert rights or interests available to secured creditors solely with respect to the ABL Priority Collateral;
 - (v) vote on any Plan of Reorganization, file any proof of claim, make other filings and make any arguments and motions (including in support of or opposition to, as applicable, the confirmation or approval of any Plan of Reorganization) that are, in each case, in accordance with the terms of this Agreement. Without limiting the generality of the foregoing or of the other provisions of this Agreement, any vote to accept, and any other act to support the confirmation or approval of, any Non-Conforming Plan of Reorganization shall be inconsistent with and, accordingly, a violation of the terms of this Agreement, and the Prior Lien Agent shall be entitled to have any such vote to accept a Non-Conforming Plan of Reorganization changed and any such support of any Non-Conforming Plan of Reorganization withdrawn; and
 - (vi) in the case of the ABL Agent or any ABL Claimholder, exercise any of its rights, powers, and/or remedies with respect to any of the Term Priority Collateral to the extent permitted by 3.3, and 3.4.

Each Subordinated Lien Agent, on behalf of the Subordinated Lien Claimholders, agrees that no Subordinated Lien Claimholder will take or receive any Term Priority Collateral (including Proceeds) in connection with the exercise of any right or remedy (including set-off) with respect to any Term Priority Collateral in violation of this Agreement. Without limiting the generality of the foregoing, unless and until the Discharge of Prior Lien Obligations has occurred, except as expressly provided in Sections 3.3, 3.4 and 3.2(c)(vi), the sole right of the Subordinated Lien Agents and the Subordinated Lien Claimholders with respect to the Term Priority Collateral is to hold a Lien on such Collateral pursuant to the Subordinated Lien Documents for the period and to the extent granted therein and to receive a share of the Proceeds thereof, if any, in accordance with Section 4.1.

(d) Except as otherwise specifically set forth in Sections 3.2(a), 3.2(c)(v), 3.4 and Article VI, the Subordinated Lien Agents and the Subordinated Lien Claimholders with respect to the Term Collateral may exercise rights and remedies as unsecured creditors against any Grantor and, subject to Section 3.1, may exercise rights and remedies with respect to the ABL Priority Collateral, in each case, in accordance with the terms of the Subordinated Lien Documents and applicable law; provided, however, that in the event that any Subordinated Lien Agent or Subordinated Lien Claimholder becomes a judgment Lien creditor in respect of Term Priority Collateral as a result of its enforcement of its rights as an unsecured creditor (or a secured creditor with respect to the ABL Priority Collateral) with respect to the Subordinated Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Prior Lien Obligations) as the other Liens securing the Subordinated Lien Obligations are subject to this Agreement.

(e) Except as provided in Section 5.3(c), nothing in this Agreement shall prohibit the receipt by any Subordinated Lien Agent or any Subordinated Lien Claimholders of the required payments of interest, principal and other amounts owed in respect of the Subordinated Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by a Subordinated Lien Agent or any Subordinated Lien Claimholders of rights or remedies as a secured creditor (including set-off) with respect to Term Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them. Nothing in this Section 3.2 impairs or otherwise adversely affects any rights or remedies the Prior Lien Agent or the Prior Lien Claimholders may have against the Grantors under the Prior Lien Documents.

3.3. Collateral Access Rights.

(a) If any Term Agent, or any agent or representative of any Term Agent, or any receiver, shall, after any Term Default, obtain possession or physical control of any of the Mortgaged Premises or any of the other Term Priority Collateral, such Term Agent shall promptly notify the ABL Agent in writing of that fact, and the ABL Agent shall, within fifteen (15) Business Days thereafter, notify such Term Agent in writing as to whether the ABL Agent desires to exercise access rights and/or use rights under this Section 3.3. In addition, if the ABL Agent, or any agent or representative of the ABL Agent, or any receiver, shall obtain possession or physical control of any of the Mortgaged Premises or any of the Term Priority Collateral, then the ABL Agent shall promptly notify the Term Agent in writing that the ABL Agent is exercising its access rights and/or use rights under this Agreement and its rights under Section 3.4 under either circumstance. Upon delivery of such notice by the ABL Agent to the Term Agent, the parties shall confer in good faith to coordinate with respect to the ABL Agent's exercise of such access rights and/or use rights. Consistent with the definition of "Access Period," access rights may apply to differing assets comprising Term Priority Collateral at differing times, in which case, a differing Access Period will apply to each such asset.

(b) During any pertinent Access Period, the ABL Agent and its agents, representatives and designees shall have an irrevocable, non-exclusive right to have access to, and a rent-free right to use, the Term Priority Collateral for the purpose of (i) arranging for and effecting the sale or disposition of ABL Priority Collateral located on any Mortgaged Premises included within the Term Priority Collateral, including the production, completion, packaging and other preparation of such ABL Priority Collateral for sale or disposition, including by use of Term Priority Collateral consisting of Equipment, (ii) selling (by public auction, private sale or a "store closing", "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in any Grantor's business), (iii) assembly, storing or otherwise dealing with the ABL Priority Collateral, (iv) removing any of the ABL Priority Collateral and (v) taking reasonable actions to protect, secure and otherwise enforce the rights of the ABL Agent and the ABL Claimholders in and to the ABL Priority Collateral, in each case without notice to, the involvement of or interference by any Term Agent or any Term Claimholder or liability to any Term Agent or any Term Claimholder. During any such Access Period, the ABL Agent and its representatives (and persons employed on their behalf), may continue to operate, service, maintain, process and sell the ABL Priority Collateral, as well as to engage in bulk sales of ABL Priority Collateral. The ABL Agent shall take proper and reasonable care under the circumstances of any Term Priority Collateral that is used by the ABL Agent during the Access Period and repair and replace, or reimburse the applicable Term Agent or applicable Term Claimholders for, any damage (ordinary wear-and-tear excepted) caused by the ABL Agent or its agents, representatives or designees and the ABL Agent shall comply with all applicable laws in all material respects in connection with its use or occupancy of the Term Priority Collateral. The ABL Agent and the ABL Claimholders shall reimburse the applicable Term Agent and the applicable Term Claimholders for any damage to Term Priority Collateral (ordinary wear-and-tear excepted) caused by the acts or omissions of Persons under the ABL Agent's control; provided, however, that the ABL Agent and the ABL Claimholders will not be liable for any diminution in the value of the Mortgaged Premises caused by the absence of the ABL Priority Collateral therefrom. In no event shall the ABL Claimholders or the ABL Agent have any liability to the Term Claimholders and/or to any Term Agent hereunder as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Priority Collateral existing prior to the date of the exercise by the ABL Agent of its rights under this Agreement. The ABL Agent and each Term Agent shall cooperate and use reasonable efforts to ensure that their activities during the Access Period as described above do not unduly interfere with the activities of the other as described above, including the right of each Term Agent to show the Term Priority Collateral to prospective purchasers and to ready the Term Priority Collateral for sale.

(c) Consistent with the definition of the term "Access Period", if any order or injunction is issued or stay is granted or is otherwise effective by operation of law that prohibits the ABL Agent from exercising any of its rights hereunder, then the Access Period granted to the ABL Agent under this Section 3.3 shall be stayed during the period of such prohibition and shall continue thereafter for the number of days remaining as required under this Section 3.3. The Term Agents shall not sell or dispose of any of the Term Priority Collateral during the Access Period, as applicable, unless the buyer agrees in writing to acquire the Term Priority Collateral subject to the terms of Section 3.3 and Section 3.4 of this Agreement and agrees therein to comply with the terms of this Section 3.3. The rights of the ABL Agent and the ABL Claimholders under this Section 3.3 and Section 3.4 during the Access Period shall continue notwithstanding such foreclosure, sale or other disposition by any Term Agent.

(d) The ABL Agent and the ABL Claimholders shall have the right to bring an action to enforce their rights under this Section 3.3 and Section 3.4, including, without limitation, an action seeking possession of the applicable Collateral and/or specific performance of this Section 3.3 and Section 3.4.

3.4. Term General Intangibles Rights/Access to Information.

(a) The ABL Agent and each Grantor hereby grants (to the full extent of their respective rights and interests) each Term Agent and its agents, representatives and designees an irrevocable royalty-free, rent-free license (which will be binding on any successor or assignee of any ABL Priority Collateral) to use, all of the Intellectual Property and other General Intangibles at any time in connection with its Enforcement, which license shall continue indefinitely.

(b) Each Term Agent and each Grantor hereby grants (to the full extent of their respective rights and interests) the ABL Agent and its agents, representatives and designees an irrevocable royalty-free, rent-free license (which will be binding on any successor or assignee of any Term Priority Collateral) to use, all of the Term General Intangibles at any time in connection with its Enforcement which license shall continue indefinitely.

3.5. Set-Off and Tracing of and Priorities in Proceeds. Each Term Agent, on behalf of the applicable Term Claimholders, acknowledges and agrees that, to the extent such Term Agent or such applicable Term Claimholder exercises its rights of set-off against any ABL Priority Collateral (in violation of this Agreement), the amount of such set-off shall be held and distributed pursuant to Section 4.1. Each ABL Agent, on behalf of the applicable ABL Claimholders, acknowledges and agrees that, to the extent such ABL Agent or such applicable ABL Claimholder exercises its rights of set-off against any Term Priority Collateral (in violation of this Agreement), the amount of such set-off shall be held and distributed pursuant to Section 4.1. In addition, unless and until the Discharge of ABL Obligations occurs, subject to Section 4.2, each Term Agent, on behalf of itself and the applicable Term Claimholders, hereby consents to the application of cash or other Proceeds of Collateral, deposited under Account Agreements in favor of the ABL Agent to the repayment of ABL Obligations pursuant to the ABL Loan Documents; provided that after receipt by the ABL Agents of an Enforcement Notice issued by the Term Agent such consent will not include the application of identifiable proceeds of Term Priority Collateral.

IV. PAYMENTS.

4.1. Application of Proceeds.

(a) Prior to the Discharge of Prior Lien Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, all ABL Priority Collateral or Proceeds thereof received at any time in connection with (A) the sale or other disposition of ABL Priority Collateral (other than in the ordinary course of business), and (B) the sale or other disposition of, or collection on, such ABL Priority Collateral (x) upon any Enforcement by any Agent or any Claimholder or (y) in any Insolvency or Liquidation Proceeding (other than in the ordinary course of business), shall be delivered to the Prior Lien Agent and shall be applied in the following order: first, to repay all ABL Obligations in such order as is specified in the ABL Documents or as a court of competent jurisdiction (including the Bankruptcy Court pursuant to the Financing Order) may otherwise direct until the Discharge of ABL Obligations has occurred and second, to repay all outstanding Term Obligations in such order as specified in the Term Security Documents or as a court of competent jurisdiction may otherwise direct (including the Bankruptcy Court pursuant to the Financing Order) until the Discharge of Term Obligations has occurred.

(b) Prior to the Discharge of Prior Lien Obligations, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, all Term Priority Collateral or Proceeds thereof received at any time in connection with (A) the sale or other disposition of Term Priority Collateral (other than in the ordinary course of business), and (B) the sale or other disposition of, or collection on, such Term Priority Collateral (x) upon any Enforcement by any Agent or any Claimholder or (y) in any Insolvency or Liquidation Proceeding, shall be delivered to the Term Agent and shall be applied in the following order: first, to repay all Term Obligations in such order as is specified in the Term Security Documents or as a court of competent jurisdiction may otherwise direct (including the Bankruptcy Court pursuant to the Financing Order) until the Discharge of Term Obligations has occurred and second, to repay all outstanding ABL Obligations in such order as specified in the ABL Documents or as a court of competent jurisdiction may otherwise direct (including the Bankruptcy Court pursuant to the Financing Order) until the Discharge of ABL Obligations has occurred.

4.2. **Payments Over in Violation of Agreement.** So long as the Discharge of Prior Lien Obligations has not occurred with respect to any Collateral, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against any Grantor, any Collateral (including assets or Proceeds subject to Liens referred to in the final sentence of Section 2.3) received by any Agent or any Claimholder at any time in connection with (A) the sale or other disposition of Collateral (other than in the ordinary course of business), and (B) any Enforcement (including set-off) relating to the Collateral or in any Insolvency or Liquidation Proceeding shall be segregated and held in trust and forthwith paid over to the Prior Lien Agent (which in the case of the Term Priority Collateral, shall be the Term Agents and in the case of the ABL Priority Collateral, shall be the ABL Agents) for the benefit of the Prior Lien Claimholders, in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. Each Prior Lien Agent with respect to any Collateral is hereby authorized by the Subordinated Lien Agents and the Subordinated Lien Claimholders with respect to such Collateral to make any such endorsements as agent for any Subordinated Lien Agent or any Subordinated Lien Claimholder. This authorization is coupled with an interest and is irrevocable until the Discharge of Prior Lien Obligations.

4.3. **Application of Payments.** Subject to the other terms of this Agreement, all payments received by (a) the ABL Agent or the ABL Claimholders may be applied, reversed and reapplied, in whole or in part, to the ABL Obligations to the extent provided for in the ABL Loan Documents and (b) any Term Agent or the Term Claimholders may be applied, reversed and reapplied, in whole or in part, to the Term Obligations to the extent provided for in the Term Loan Documents.

4.4. **Revolving Nature of ABL Obligations.** Each Term Agent, on behalf of the applicable Term Claimholders, acknowledges and agrees that the ABL Loan Agreement includes a revolving commitment and that the amount of the ABL Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed.

**V.
OTHER AGREEMENTS.**

5.1. **Releases.**

(a) (i) If any Prior Lien Agent, on behalf of any of the Prior Lien Claimholders, releases any of its Liens on any part of the ABL Priority Collateral (x) in connection with a public or private Disposition of ABL Priority Collateral by one or more Grantors with the consent of such Prior Lien Agent at any time after the occurrence and during the continuance of any ABL Default that permits the acceleration of the ABL Obligations or (y) in connection with the exercise of remedies of Enforcement (including as provided in Section 3.1(b) or Section 6.8(a)) by the Prior Lien Agent or any Prior Lien Claimholder with respect to any ABL Priority Collateral, irrespective of whether a Term Default has occurred and is continuing, then the Liens, if any, of the Subordinated Lien Agents, for the benefit of the Subordinated Lien Claimholders, on the ABL Priority Collateral sold or disposed of in connection therewith, shall be automatically, unconditionally and simultaneously released (and, if such release involves all or substantially of the assets held by (or Capital Stock issued by) any Foreign Subsidiary, such Foreign Subsidiary shall be automatically, unconditionally and simultaneously released from any guaranty or other Term Obligations under the Term Loan Documents); provided that, to the extent the Proceeds of such ABL Priority Collateral are not applied to reduce Prior Lien Obligations, the Subordinated Lien Agents shall retain Liens on such Proceeds with the respective priorities set forth in Section 2.1. Each Subordinated Lien Agent, on behalf of the applicable Subordinated Lien Claimholders, promptly shall execute and deliver to the Prior Lien Agent such termination statements, releases and other documents as the Prior Lien Agent may request in writing to effectively confirm such release.

(ii) If any Prior Lien Agent, on behalf of any of the Prior Lien Claimholders, releases any of its Liens on any part of the Term Priority Collateral (x) in connection with a public or private Disposition of Term Priority Collateral by one or more Grantors with the consent of such Prior Lien Agent at any time after the occurrence and during the continuance of any Term Default that permits the acceleration of the Term Obligations or (y) in connection with the exercise of remedies of Enforcement (including as provided in Section 3.2(b) or Section 6.8(b)) by the Prior Lien Agent or any Prior Lien Claimholder with respect to any Term Priority Collateral, irrespective of whether an ABL Default has occurred and is continuing, then the Liens, if any, of each Subordinated Lien Agent, for the benefit of the Subordinated Lien Claimholders, on the Term Priority Collateral sold or disposed of in connection therewith, shall be automatically, unconditionally and simultaneously released; provided that the provisions of Section 3.3 and 3.4 shall continue, to the extent such Sections are applicable at the time of such sale, transfer or other disposition; provided, further, that, to the extent the Proceeds of such Term Priority Collateral are not applied to reduce Prior Lien Obligations, the Subordinated Lien Agents shall retain Liens on such Proceeds with the respective priorities set forth in Section 2.1. Each Subordinated Lien Agent, on behalf of the applicable Subordinated Lien Claimholders, promptly shall execute and deliver to the Prior Lien Agent such termination statements, releases and other documents as the Prior Lien Agent may request to effectively confirm such release.

(b) Each Subordinated Lien Agent with respect to any Collateral, on behalf of the applicable Subordinated Lien Claimholders, hereby irrevocably constitutes and appoints each Prior Lien Agent with respect to such Collateral and any officer or agent of such Prior Lien Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Subordinated Lien Agent or such Subordinated Lien Claimholder or in the Subordinated Lien Agent's own name, from time to time in such Prior Lien Agent's discretion exercised in good faith, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

5.2. Insurance.

(a) Subject to the terms of, and the rights of the Grantors under, the Prior Lien Documents, the Prior Lien Agent, on behalf of the Prior Lien Claimholders, shall have the sole and exclusive right to adjust settlement for any insurance policy covering the ABL Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting such ABL Priority Collateral. All Proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect of the ABL Priority Collateral and to the extent required by the Prior Lien Documents shall be paid to the Prior Lien Agent for the benefit of the Prior Lien Claimholders pursuant to the terms of the Prior Lien Documents (including, without limitation, for purposes of cash collateralization of letters of credit) and thereafter until the Discharge of Prior Lien Obligations has occurred. If any Subordinated Lien Agent or any Subordinated Lien Claimholders shall, at any time, receive any Proceeds of any such insurance policy or any such award or payment with respect to ABL Priority Collateral in contravention of this Agreement, it shall segregate and hold in trust and forthwith pay such amount over to the Prior Lien Agent in accordance with the terms of Section 4.2.

(b) Subject to the terms of, and the rights of the Grantors under, the Prior Lien Documents, the Prior Lien Agent, on behalf of the Prior Lien Claimholders, shall have the sole and exclusive right to adjust settlement for any insurance policy covering the Term Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting such Term Priority Collateral. All Proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect of the Term Priority Collateral and to the extent required by the Prior Lien Documents shall be paid to the Term Agents for the benefit of the Prior Lien Claimholders pursuant to the terms of the Prior Lien Documents (including, without limitation, for purposes of cash collateralization of letters of credit) and thereafter until the Discharge of Prior Lien Obligations has occurred. If any Subordinated Lien Agent or any Subordinated Lien Claimholders shall, at any time, receive any Proceeds of any such insurance policy or any such award or payment with respect to Term Priority Collateral in contravention of this Agreement, it shall (to the extent in its possession in the case of the ABL Agent) segregate and hold in trust and forthwith pay such amount over to the Term Agent in accordance with the terms of Section 4.2.

(c) To effectuate the foregoing, and to the extent that the pertinent insurance company agrees to issue such endorsements, the Agents shall each receive separate lender's loss payable endorsements naming themselves as loss payee and additional insured, as their interests may appear, with respect to policies which insure Collateral hereunder.

5.3. Amendments to ABL Loan Documents and Term Loan Documents; Refinancing.

(a) Subject to Sections 5.3(c) and 5.3(d), the ABL Loan Documents and Term Loan Documents may be amended, supplemented or otherwise modified in accordance with their terms, all without affecting the Lien subordination or other provisions of this Agreement. The (i) ABL Obligations may be Refinanced without notice to, or the consent of any Term Agent or the Term Claimholders and without affecting the Lien subordination or other provisions of this Agreement and (ii) the Term Obligations may be Refinanced without notice to, or consent of, the ABL Agent or the ABL Claimholders; provided, however, that, in each case, the lenders or holders of any such Refinancing debt that is purported to be secured by a Lien on any Collateral bind themselves in writing to the terms of this Agreement; provided further, however, that, if such Refinancing debt is secured by a Lien on any Collateral, the holders of such Refinancing debt shall be deemed bound by the terms hereof regardless of whether or not such writing is provided. For the avoidance of doubt, the sale or other transfer of Indebtedness is not restricted by this Agreement but the provisions of this Agreement shall be binding on all holders of ABL Obligations and Term Obligations.

(b) Subject to Sections 5.3(c) and 5.3(d), the ABL Agents and Term Agents shall each use good faith efforts to notify the Agent (which may constitute electronic mail to counsel to such other party in lieu of a notice made in accordance with the terms otherwise required by this Agreement) of any written amendment or modification to the ABL Documents and the Term Loan Documents, respectively (it being understood that ABL Agent would only use good faith efforts to notify the Term Agent), but the failure to provide such notice shall not create a cause of action against the party failing to give such notice or create any claim or right on behalf of any other Claimholder.

(c) Without the consent of the Term Agents, the ABL Claimholders will not be entitled to agree (and will not agree), after the date hereof, to any amendment to or modification of the ABL Loan Documents, whether in a Refinancing or otherwise, that is prohibited by the Term Loan Agreement as in effect on the Existing Closing Date (or, if such prohibition is less restrictive to the ABL Claimholders, as in effect on the date of such amendment or modification).

(d) Without the consent of the ABL Agents, the Term Agents and the Term Claimholders will not be entitled to agree (and will not agree), after the date hereof, to any amendment to or modification of the Term Loan Documents, whether in a Refinancing or otherwise, that is prohibited by the ABL Loan Agreement as in effect on the Existing Closing Date (or, if such prohibition is less restrictive to the Term Claimholders, as in effect on the date of such amendment or modification).

(e) [RESERVED]

(f) So long as the Discharge of ABL Obligations has not occurred, each Term Agent agrees that each Term Security Document (other than the Financing Order) shall include the following language (or similar language acceptable to the ABL Agent): "Notwithstanding anything herein to the contrary, the liens and security interests granted to the Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent hereunder, are subject to the provisions of the Amended and Restated Intercreditor Agreement dated as of June 3, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement"), among JPMorgan Chase Bank, N.A., as ABL Agent, Cortland Capital Market Services LLC, as the Existing Term Agent, the DIP Term Agent, and Specified Mexico Collateral Agent and the Grantors (as defined in the Intercreditor Agreement) from time to time party thereto. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern and control."

(g) So long as the Discharge of Term Obligations has not occurred, the ABL Agent agrees that each applicable ABL Security Document (other than the Financing Order and any ABL Security Document governed by the laws of a jurisdiction other than the United States or a State thereof) entered into on or after the date hereof shall include the following language (or similar language acceptable to the Term Agent): "Notwithstanding anything herein to the contrary, the liens and security interests granted to the Administrative Agent pursuant to this Agreement and the exercise of any right or remedy by the Administrative Agent hereunder, are subject to the provisions of the Amended and Restated Intercreditor Agreement dated as of June 3, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement"), among the Administrative Agent, as ABL Agent, Cortland Capital Market Services LLC, as the Existing Term Agent, the DIP Term Agent and Specified Mexico Collateral Agent, and the Grantors (as defined in the Intercreditor Agreement) from time to time party thereto. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern and control."

5.4. Bailees for Perfection.

(a) Each Agent agrees to hold that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect a Lien thereon (such Collateral, which shall include without limitation Account Agreements and Capital Stock, being the "Pledged Collateral") as (i) in the case of each ABL Agent, the collateral agent for the applicable ABL Claimholders under the applicable ABL Loan Documents or, in the case of each Term Agent, the collateral agent for the applicable Term Claimholders under the applicable Term Loan Documents and (ii) gratuitous bailee for the benefit of each other Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the ABL Loan Documents and the Term Loan Documents, respectively, subject to the terms and conditions of this Section 5.4. Each Term Agent and the Term Claimholders hereby appoint the ABL Agent as their gratuitous bailee for the purposes of perfecting their security interest in all Pledged Collateral in which the ABL Agent has a perfected security interest under the UCC. The ABL Agent and the ABL Claimholders hereby appoint each Term Agent as their gratuitous bailee for the purposes of perfecting their security interest in all Pledged Collateral in which such Term Agent has a perfected security interest under the UCC. Each Agent hereby accepts such appointments pursuant to this Section 5.4(a) and acknowledges and agrees that it shall act for the benefit of the other Claimholders with respect to any Pledged Collateral and that any Proceeds received by such Agent under any Pledged Collateral shall be applied in accordance with Article IV. In furtherance of the foregoing, each Grantor hereby grants a security interest in the Pledged Collateral to (x) each Term Agent for the benefit of the ABL Claimholders and (y) the ABL Agent for the benefit of the Term Claimholders.

(b) No Agent shall have any obligation whatsoever to any other Secured Party as a result of Section 5.4(a) to ensure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person. The duties or responsibilities of the respective Agents under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee in accordance with this Section 5.4 and delivering the Pledged Collateral with respect to which it is the Prior Lien Agent that is in its possession upon a Discharge of Prior Lien Obligations as provided in paragraph (d) below.

(c) No Agent acting pursuant to this Section 5.4 shall have by reason of the ABL Loan Documents, the Term Loan Documents, this Agreement or any other document a fiduciary relationship in respect of any other Agent or Secured Party.

(d) Upon the Discharge of Term Obligations, each Term Agent shall deliver the remaining Pledged Collateral (if any) in its possession together with any necessary endorsements to the ABL Agent to the extent the Discharge of ABL Obligations has not occurred. Upon the Discharge of ABL Obligations, each ABL Agent shall deliver the remaining Pledged Collateral (if any) in its possession together with any necessary endorsements to the Term Agents to the extent the Discharge of Term Obligations has not occurred. Notwithstanding anything to the contrary contained in this Agreement, any obligation of the Agent, to make any delivery to the other Agent under this Section 5.4(d) or Section 5.5 is subject to (i) the order of any court of competent jurisdiction, or (ii) any automatic stay imposed in connection with any Insolvency or Liquidation Proceeding.

(e) Each of the DIP ABL Agent and the DIP Term Agent agree that they respectively hold the security interests created by the Portugal Collateral Documents and Portugal Guarantee (as such terms are defined in the DIP ABL Loan Agreement and the DIP Term Loan Agreement, as applicable) governed by Portuguese law as a security agent, acting in their name and for their benefit, and on behalf and for the benefit of the other Secured Parties (as such term is defined in the applicable Portugal Collateral Documents) and, for the purposes of enforcing the Portugal Collateral, acting for themselves and/or as *mandatários com poderes de representação* as applicable under the relevant Portugal Collateral Document.

(f) The security interests created under the Portugal Collateral Documents (as defined in the DIP ABL Loan Agreement and the DIP Term Loan Agreement, as applicable) governed by Portuguese law shall not be held by the Agents (acting as collateral agents) on trust but as agents, acting for themselves and on behalf and for the benefit of the Secured Parties (as such term is defined in the applicable Portugal Collateral Documents), respectively (*mandatário com representação*) in accordance with, in particular, article 1178 of the Portuguese Civil Code (*Código Civil*) and the relevant provisions of the Portugal Collateral Documents. In furtherance of the foregoing, but solely for the purpose of taking and/or enforcing the Portugal Collateral created by the Portugal Collateral Documents to be entered into by Portugal Loan Guarantors incorporated under the laws of Portugal, the Agents (acting as collateral agents) shall be the joint and several creditors (*credores solidários*) with each of the Secured Parties (as such term is defined in the applicable Portugal Collateral Documents), respectively, with respect to any and all ABL Obligations or DIP Term Obligations, as and to the extent applicable under the Portugal Collateral Documents, respectively, in accordance with, in particular, article 528 of the Portuguese Civil Code (*Código Civil*).

5.5. When Discharge of ABL Obligations and Discharge of Term Obligations Deemed to Not Have Occurred. If at any time after or simultaneously with the Discharge of ABL Obligations or a Discharge of Term Obligations, the Company shall enter into any Permitted Refinancing of any ABL Obligation or Term Obligations, as applicable, then such Discharge of ABL Obligations or Discharge of Term Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such first Discharge of ABL Obligations or Discharge of Term Obligations in order to effectuate such discharge among (i) the agent(s) and other claimholders under the facility to be discharged, (ii) the agents and other claimholders under the new facility, and (iii) the Grantors), and, from and after the date on which the New Debt Notice is delivered to each Agent in accordance with the next sentence, the obligations under such Permitted Refinancing shall automatically be treated as ABL Obligations or Term Obligations for all purposes of this Agreement, as applicable, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and the ABL Agent or the applicable Term Agent, as applicable, under such new ABL Loan Documents or Term Loan Documents, as applicable, shall be the ABL Agent or a Term Agent, as applicable, for all purposes of this Agreement (and if there were no Prior Term Agent, such new Term Agent shall become the Term Agent). Upon receipt of a notice (the "New Debt Notice") stating that the Company has entered into new ABL Loan Documents or new Term Loan Documents (which notice shall include a complete copy of the relevant new documents and provide the identity of the new Agent, such agent, the "New Agent"), each other Agent, upon written request of the New Agent, shall promptly (a) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such New Agent shall reasonably request in order to provide to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the then terms of this Agreement and (b) deliver to the New Agent any Pledged Collateral in the possession of any Subordinated Lien Agent to the extent such New Agent is the Prior Lien Agent with respect to such Pledged Collateral together with any necessary endorsements (or otherwise allow the New Agent to obtain control of such Pledged Collateral). In accordance with Section 5.3(a), the New Agent shall agree in a writing addressed to each other Agent and the Claimholders, as applicable, to be bound by the terms of this Agreement.

VI. INSOLVENCY OR LIQUIDATION PROCEEDINGS.

6.1. Finance and Sale Issues. Each Subordinated Lien Agent, on behalf of the applicable Subordinated Lien Claimholders, hereby agrees that, until the Discharge of Prior Lien Obligations has occurred, if any Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Prior Lien Agent or the Prior Lien Claimholders with respect to any of such Subordinated Lien Claimholders' Subordinated Lien Collateral shall desire to permit the use of "cash collateral" (as such term is defined in Section 363(a) of the Bankruptcy Code) representing Proceeds of such Subordinated Lien Collateral or to permit any Grantor to obtain financing, whether from the Prior Lien Claimholders or any other Person under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("DIP Financing") secured by a Lien on such Subordinated Lien Collateral, then no Subordinated Lien Claimholder will be entitled to raise (and will not raise or support any Person in raising), but instead shall be deemed to have consented to, and hereby irrevocably and absolutely waived, any objection to, and shall not otherwise in any manner be entitled to oppose or will oppose or support any Person in opposing, such cash collateral use or DIP Financing (including, except as expressly provided below, any claim that the Subordinated Lien Claimholders are entitled to adequate protection on account of their interests in such Subordinated Lien Collateral as a condition thereto) so long as such cash collateral use or DIP Financing meets the following requirements: (i) each Subordinated Lien Claimholder retains a Lien on its Subordinated Lien Collateral for any DIP Financing with, except as provided in the following sentence, the respective priorities provided in Section 2.1, and (x) with respect to Subordinated Lien Collateral of the ABL Claimholders or cash collateral in respect thereof, no Lien is granted to secure such DIP Financing on any ABL Priority Collateral and no such cash collateral to be used constitutes Proceeds of ABL Priority Collateral unless the ABL Claimholders have consented thereto or (y) with respect to Subordinated Lien Collateral of the Term Claimholders or cash collateral in respect thereof, no Lien is granted to secure such DIP Financing on any Term Priority Collateral and no such cash collateral to be used constitutes Proceeds of Term Priority Collateral unless the Term Claimholders have consented thereto, (ii) to the extent that the Prior Lien Agent is granted adequate protection in the form of a Lien on Collateral arising after the commencement of the Insolvency or Liquidation Proceeding, the Subordinated Lien Claimholders are permitted to seek a Lien on such additional Collateral with, except as set forth in the following sentence, the relative priority set forth in Section 2.1 (and no Prior Lien Agent or Prior Lien Claimholder shall oppose any motion by any Subordinated Lien Claimholder to receive such a Lien), (iii) the terms of such DIP Financing or use of cash collateral do not require any Grantor to seek approval for any Plan of Reorganization that is not a Conforming Plan of Reorganization and (iv) the terms of such DIP Financing do not require such Subordinated Claimholders to extend additional credit pursuant to such DIP Financing (it being understood and agreed that the DIP Financing and cash collateral use contemplated under the DIP ABL Loan Agreement and DIP Term Loan Agreement shall be deemed to meet each of the foregoing requirements in subclauses (i) through (iv)). If requested by the Prior Lien Agent, each Subordinated Lien Agent and Subordinated Lien Claimholders shall be required to subordinate and will subordinate its Liens in its Subordinated Lien Collateral to the Liens securing any such DIP Financing (and all obligations relating thereto, including any "carve-out" granting administrative priority status or Lien priority to secure repayment of fees and expenses of professionals retained by any debtor or creditors' committee). Each Subordinated Lien Agent on behalf of itself and the applicable Subordinated Lien Claimholders, agrees that no such Person shall provide to such Grantor any DIP Financing (or support any other Person in seeking to provide to any Grantor any such DIP Financing) to the extent that any Subordinated Lien Claimholder would, in connection with such financing, be granted a Lien on any of its Subordinated Lien Collateral unless the Prior Lien Claimholders shall have consented thereto (it being understood that the Prior Lien Claimholders shall be deemed to have consented to the Liens granted to secure the DIP Financing contemplated under the DIP ABL Loan Agreement and DIP Term Loan Agreement).

6.2. Relief from the Automatic Stay. Until the Discharge of Prior Lien Obligations, each Subordinated Lien Agent, and the other Subordinated Lien Claimholders, agree that none of them shall seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of any of their respective Subordinated Lien Collateral, without the prior written consent of the Prior Lien Agent for such Collateral (given or not given in its sole and absolute discretion), unless (a) the Prior Lien Agent already has filed a motion (which remains pending) for such relief with respect to its interest in such Collateral and (b) a corresponding motion, in the reasonable judgment of the applicable Subordinated Lien Agent, must be filed solely for the purpose of preserving such Subordinated Lien Agent's ability to receive residual distributions pursuant to Section 4.1, although the Subordinated Lien Claimholders shall otherwise remain subject to the applicable restrictions in Section 3.1 and Section 3.2 following the granting of any such relief from the automatic stay.

6.3. Adequate Protection. Prior to the Discharge of Prior Lien Obligations, each Subordinated Lien Agent, on behalf of itself and the applicable Subordinated Lien Claimholders, agrees that none of them shall be entitled to contest and none of them shall contest (or support any other Person contesting) (but instead shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right and deemed to have consented to):

- (i) any request by the Prior Lien Agent or the other Prior Lien Claimholders for relief from the automatic stay with respect to the Subordinated Lien Collateral of such Subordinated Lien Claimholders; or
- (ii) any request by the Prior Lien Agent or the other Prior Lien Claimholders for adequate protection with respect to the Subordinated Lien Collateral of such Subordinated Lien Claimholders; or
- (iii) any objection by the Prior Lien Agent or the other Prior Lien Claimholders to any motion, relief, action or proceeding based on the Prior Lien Agent or the other Prior Lien Claimholders claiming a lack of adequate protection with respect to the Subordinated Lien Collateral of such Subordinated Lien Claimholders.

(b) Consistent with the foregoing provisions in this Section 6.3, and except as provided in Sections 6.1 and 6.7, in any Insolvency or Liquidation Proceeding, no Subordinated Lien Claimholder shall be entitled (and each Subordinated Lien Claimholder shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right) to seek or otherwise be granted any type of adequate protection with respect to its interests in its Subordinated Lien Collateral (except as expressly set forth in Section 6.1 or as may otherwise be consented to in writing by the Prior Lien Agent with respect to such Collateral in its sole and absolute discretion); provided, however, subject to Section 6.1, Subordinated Lien Claimholders may seek and obtain adequate protection in the form of an additional or replacement Liens on Collateral so long as (i) the Prior Lien Claimholders have been granted adequate protection in the form of a replacement lien on such Collateral, and (ii) any such Lien on Subordinated Lien Collateral (and on any Collateral granted as adequate protection for the Subordinated Lien Claimholders in respect of their interest in such Subordinated Lien Collateral) is subordinated to the Liens of the Prior Lien Agent in such Collateral on the same basis as the other Liens of the Subordinated Lien Agents on Subordinated Lien Collateral; and

(c) Nothing herein shall limit the rights of any Prior Lien Agent or the Prior Lien Claimholders to seek adequate protection with respect to their rights in their Prior Lien Collateral in any Insolvency or Liquidation Proceeding (including adequate protection in the form of a cash payment, periodic cash payments or otherwise) so long as such request is not otherwise inconsistent with this Agreement.

6.4. Avoidance Issues. If any Prior Lien Claimholder is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the applicable Grantor any amount paid in respect of ABL Obligations or the Term Obligations, as applicable (a "Recovery"), then such ABL Claimholders or Term Claimholders shall be entitled to a reinstatement of ABL Obligations or the Term Obligations, as applicable, with respect to all such recovered amounts. If this Agreement shall have been terminated with respect to any Claimholder prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement or with respect to any amounts previously received.

6.5. Reorganization Securities; Plan of Reorganization. Subject to the ability of the ABL Claimholders and the Term Claimholders, as applicable, to support or oppose confirmation or approval of any Conforming Plan of Reorganization or to oppose confirmation or approval of any Non-Conforming Plan of Reorganization, as provided herein, if, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a Plan of Reorganization, both on account of Prior Lien Obligations and on account of Subordinated Lien Obligations, then, to the extent the debt obligations distributed on account of the Prior Lien Obligations and on account of the Subordinated Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the debt obligations so distributed, to the Liens securing such debt obligations and the distribution of Proceeds thereof.

6.6. Post-Petition Interest. No Subordinated Lien Claimholder shall oppose or seek to challenge any claim by any Prior Lien Agent or any Prior Lien Claimholder for allowance in any Insolvency or Liquidation Proceeding of Prior Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Lien on such Prior Lien Claimholder's Prior Lien Collateral, without regard to the existence of the Subordinated Lien Obligations with respect to such Collateral.

6.7. Separate Grants of Security and Separate Classification. The ABL Agent, on behalf of the ABL Claimholders, and each Term Agent on behalf of the applicable Term Claimholders, acknowledge and intend that: the respective grants of Liens pursuant to the ABL Security Documents and the Term Loan Documents constitute two separate and distinct grants of Liens, and because of, among other things, their differing rights in the Collateral, such that the Term Obligations and the ABL Obligations are fundamentally different and, in each case, must be separately classified in any Plan of Reorganization proposed or confirmed (or approved) in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the Term Claimholders and the ABL Claimholders, in each case, in respect of the Collateral constitute claims in the same class (rather than at least two separate classes of secured claims with the priorities described in Section 2.1), then the ABL Claimholders and the Term Claimholders hereby acknowledge and agree that all distributions shall be made as if there were two separate classes of ABL Obligations and Term Obligations (with the effect being that, to the extent that the aggregate value of their Prior Lien Collateral is sufficient (for this purpose ignoring all claims held by the Subordinated Lien Claimholders thereon), the Prior Lien Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees or expenses that is available from their Prior Lien Collateral, before any distribution is made in respect of the Subordinated Lien Obligations with respect to such Collateral, with each Subordinated Lien Claimholder acknowledging and agreeing to turn over to the Prior Lien Agent with respect to such Collateral amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the aggregate recoveries of the Subordinated Lien Obligations.

6.8. Asset Dispositions in an Insolvency or Liquidation Proceeding.

(a) Without limiting the Prior Lien Agent's and the Prior Lien Claimholders' rights under Section 3.1(b), neither any Subordinated Lien Agent nor any other Subordinated Lien Claimholder shall, in any Insolvency or Liquidation Proceeding or otherwise, oppose any sale or disposition of any ABL Priority Collateral that is supported by the Prior Lien Claimholders, and each Subordinated Lien Agent and each other Subordinated Lien Claimholder will be deemed to have irrevocably, absolutely, and unconditionally consented under Section 363 of the Bankruptcy Code (and otherwise) to any sale of any ABL Priority Collateral supported by the Prior Lien Claimholders and to have released their Liens on such assets; provided that to the extent the Proceeds of such Collateral are not applied to reduce Prior Lien Obligations or any DIP Financing secured by a prior Lien on such ABL Priority Collateral, each Subordinated Lien Agent shall retain a Lien on such Proceeds with the respective priorities described in Section 2.1. Notwithstanding the foregoing, this Agreement shall not be construed to in any way limit or impair the right of the Subordinated Lien Claimholders from exercising a credit bid in a sale or other disposition of their Subordinated Lien Collateral under Section 363 of the Bankruptcy Code; provided that in connection with and immediately after giving effect to such sale and credit bid there occurs a Discharge of Prior Lien Obligations.

(b) Without limiting the Prior Lien Agent's and the Prior Lien Claimholders' rights under Section 3.2(b), neither any Subordinated Lien Agent nor any other Subordinated Lien Claimholder shall, in any Insolvency Proceeding or otherwise, oppose any sale or disposition of any Term Priority Collateral that is supported by the Prior Lien Claimholders (but in the case of the ABL Claimholders, subject to their rights under Section 3.3(d)), and each Subordinated Lien Agent and each other Subordinated Lien Claimholder will be deemed to have consented under Section 363 of the Bankruptcy Code (and otherwise) to any sale of any Term Priority Collateral supported by the Prior Lien Claimholders and to have released their Liens on such assets; provided that to the extent the Proceeds of such Collateral are not applied to reduce Prior Lien Obligations or any DIP Financing secured by a prior Lien on such Term Priority Collateral, each Subordinated Lien Agent shall retain a Lien on such Proceeds with the respective priorities described in Section 2.1; provided further that the ABL Agent's and the ABL Claimholders' rights under Sections 3.3 and 3.4 shall survive any such sale or disposition. Notwithstanding the foregoing, this Agreement shall not be construed to in any way limit or impair the right of the Subordinated Lien Claimholders from exercising a credit bid in a sale or other disposition of their Subordinated Lien Collateral under Section 363 of the Bankruptcy Code; provided that in connection with and immediately after giving effect to such sale and credit bid there occurs a Discharge of Prior Lien Obligations.

VII.
RELIANCE; WAIVERS; ETC.

7.1. **Reliance**. Other than any reliance on the terms of this Agreement, the ABL Agent, on behalf the ABL Claimholders, acknowledges that it and the other ABL Claimholders have, independently and without reliance on any Term Agent or any Term Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into ABL Loan Documents and be bound by the terms of this Agreement, and they will continue to make their own credit decision in taking or not taking any action under the ABL Loan Documents or this Agreement. Each Term Agent, on behalf of the applicable Term Claimholders, acknowledges that it and the other Term Claimholders represented by it have, independently and without reliance on the ABL Agent or any other ABL Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the other Term Loan Documents and be bound by the terms of this Agreement, and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Documents or this Agreement.

7.2. **No Warranties or Liability**. The ABL Agent, on behalf of the ABL Claimholders, acknowledges and agrees that none of the Term Agents and the Term Claimholders have made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the other Term Loan Documents, the ownership by any Grantor of any Collateral or the perfection of any Liens thereon. Except as otherwise provided in this Agreement, the Term Agents and the Term Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents, in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Each Term Agent, on behalf of the applicable Term Claimholders, acknowledges and agrees that none of the ABL Agent and the ABL Claimholders have made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the other ABL Loan Documents, the ownership by any Grantor of any Collateral or the perfection of any Liens thereon. Except as otherwise provided in this Agreement, the ABL Agent and the ABL Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the ABL Loan Documents, in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Except as expressly provided herein (i) the Term Agents and the Term Claimholders shall have no duty to the ABL Agent or any of the ABL Claimholders and (ii) the ABL Agent and the other ABL Claimholders shall have no duty to the Term Agents or any of the other Term Claimholders, in each case, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements any Grantor (including the ABL Loan Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3. **No Waiver of Lien Priorities**.

(a) No right of the Agents or the other Claimholders to enforce any provision of this Agreement or any ABL Loan Document or Term Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by such Agents or Claimholders or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the ABL Loan Documents or any of the Term Loan Documents, regardless of any knowledge thereof which the Agents or the ABL Claimholders or the Term Claimholders, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Grantors under the ABL Loan Documents and the Term Loan Documents and except as otherwise expressly provided in this Agreement), the Agents and the other Claimholders may, at any time and from time to time in accordance with the ABL Loan Documents and the Term Loan Documents and/or applicable law, without the consent of, or notice to, any other Agent or any other Claimholder (as applicable), without incurring any liabilities to such Persons and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy is affected, impaired or extinguished thereby) do any one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Obligations or any Lien or guaranty thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the Agents or any rights or remedies under any of the ABL Loan Documents or the Term Loan Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Collateral (except to the extent provided in this Agreement) or any liability of any Grantor or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any Obligation or any other liability of any Grantor or any security therefore or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability in any manner or order that is not inconsistent with the terms of this Agreement; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any security or any Grantor or any other Person, elect any remedy and otherwise deal freely with any Grantor.

7.4. Obligations Unconditional. All rights, interests, agreements and obligations of the ABL Claimholders and the Term Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any ABL Loan Documents or any Term Loan Documents;

(b) except, in each case, as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the ABL Obligations or Term Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Loan Document or Term Loan Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Obligations or Term Obligations or any guaranty thereof;

- (d) the commencement of any Insolvency or Liquidation Proceeding in respect of any Grantor; or
- (e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, any Grantor in respect of the any Agent or Claimholder in respect of this Agreement.

VIII.
SPECIFIED MEXICO COLLATERAL AGENT.

8.1. Appointment and Authority.

(a) Each of the Specified Mexico Collateral Claimholders, by its acceptance hereof, hereby irrevocably designates and appoints Cortland Capital Market Services LLC to act as the Specified Mexico Collateral Agent with respect to the Specified Mexico Collateral and for purposes of creating a Lien therein and perfection under the laws of Mexico, with such powers as are specifically delegated to the Specified Mexico Collateral Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto. The Specified Mexico Collateral Agent shall not have a fiduciary relationship in respect of any Claimholder by reason of this Agreement or the exercise of any powers delegated to the Specified Mexico Collateral Agent hereunder or under the Specified Mexico Collateral Documents. In addition, for Mexican law purposes, each Specified Mexico Collateral Claimholders hereby grants to the Specified Mexico Collateral Agent a *comisión mercantil con representación* in accordance with Articles 273, 274 and any other applicable Articles of the Commerce Code of Mexico (*Código de Comercio*) to act on its behalf as its agent in connection with the Specified Mexico Collateral Documents and this Agreement, and authorizes the Specified Mexico Collateral Agent to enter into the Specified Mexico Collateral Documents and to hold the Specified Mexico Collateral granted to it under such documents acting on behalf of itself and for the benefit of the Specified Mexico Collateral Claimholders under this Agreement to secure any of the Specified Mexico Collateral Obligations. Furthermore, the ABL Agent, on behalf of the ABL Claimholders, and the DIP Term Agent, on behalf of the DIP Term Claimholders, by executing this Agreement hereby authorizes the Specified Mexico Collateral Agent to delegate the above mentioned *comisión mercantil con representación* pursuant to Article 280 and any other applicable Articles of the Commerce Code of Mexico (*Código de Comercio*) to the extent permitted by and under the terms provided under this Agreement.

(b) Each of the Specified Mexico Collateral Claimholders irrevocably authorizes the Specified Mexico Collateral Agent, in such capacity, to take such action on such Specified Mexico Collateral Claimholder's behalf under the provisions of any Specified Mexico Collateral Document as are expressly delegated to the Specified Mexico Collateral Agent and to exercise such powers and perform such duties as are expressly delegated to the Specified Mexico Collateral Agent by the terms thereof (provided that if such action so delegated under a Specified Mexico Collateral Document requires the Specified Mexico Collateral Agent to enforce or release any Lien under any Specified Mexico Collateral Document, such action shall only be taken at the written request or direction of the DIP ABL Agent until the Discharge of ABL Obligations), together with such other powers as are reasonably incidental thereto. The Specified Mexico Collateral Agent shall not have any duties or responsibilities, except those expressly set forth with respect to it in this Agreement or in the Specified Mexico Collateral Documents, or any fiduciary relationship with any Specified Mexico Collateral Claimholder. Each reference to requests of or directions, acknowledgments or consents by, DIP ABL Agent in this Article VIII shall be construed to mean only JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the DIP ABL Loan Agreement (or any successor administrative agent under the DIP ABL Loan Agreement (including in connection with a Refinancing of the DIP ABL Loan Agreement)).

(c) Each Specified Mexico Collateral Claimholder acknowledges and agrees that the Specified Mexico Collateral Agent shall, and shall be entitled, for the benefit of the Specified Mexico Collateral Claimholders, (i) to sell, transfer or otherwise dispose of or deal with any Specified Mexico Collateral that is not prohibited by this Agreement on the written instructions of the DIP ABL Agent until the Discharge of ABL Obligations (and following the Discharge of ABL Obligations, at the written direction of DIP Term Agent), and (ii) to act solely on the written instructions of the DIP ABL Agent until the Discharge of ABL Obligations, in each case without regard to any rights to which the DIP Term Claimholders would otherwise be entitled as a result of the Specified Mexico Collateral Obligations. Without limiting the foregoing, each DIP Term Claimholder agrees that none of the Specified Mexico Collateral Agent, the DIP ABL Agent or any other Specified Mexico Collateral Claimholder shall have any duty or obligation first to marshal or realize upon any type of Specified Mexico Collateral, or to sell, dispose of or otherwise liquidate all or any portion of such Specified Mexico Collateral, in any manner that would maximize the return to the DIP Term Claimholders, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by the DIP Term Claimholders from such realization, sale, disposition or liquidation. Each of the Specified Mexico Collateral Claimholders waives any claim it may now or hereafter have against the Specified Mexico Collateral Agent arising out of (i) any actions that the Specified Mexico Collateral Agent, any Agent or any Specified Mexico Collateral Claimholder takes or omits to take (including, actions with respect to the creation, perfection or continuation of Liens on any Specified Mexico Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of the Specified Mexico Collateral and actions with respect to the collection of any claim for all or any part of the Specified Mexico Collateral Obligations from any account debtor, guarantor or any other party) in accordance with this Agreement, or the Specified Mexico Collateral Documents or any other agreement related thereto (other than the taking of an action by Specified Mexico Collateral Agent constituting gross negligence, willful misconduct or a material breach in bad faith of the terms of this Agreement by Specified Mexico Collateral Agent, in each case, as determined by a court of competent jurisdiction in a final and nonappealable judgment) or to the collection of the Specified Mexico Collateral Obligations or the valuation, use, protection or release of any security for the Specified Mexico Collateral Obligations, or (ii) subject to Article VI, any election by the DIP ABL Agent or any other holders of Specified Mexico Collateral Obligations, in any proceeding instituted under the insolvency proceeding pursuant to Article 2166 of the Mexican Federal Civil Code (*Código Civil Federal*) or its correlative provisions of the Civil Codes of the States that comprises Mexico or Article 9 of the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*) (or any successor provision).

8.2. Delegation of Duties. The Specified Mexico Collateral Agent may execute any of its duties under this Agreement and the other Specified Mexico Collateral Documents by or through employees, agents or attorneys-in-fact and shall not be answerable to the Specified Mexico Collateral Claimholders. The Specified Mexico Collateral Agent and any such agent or attorney may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory provisions of this Article VIII shall apply to any such employee, agent or attorney and to the Affiliates of the Specified Mexico Collateral Agent and any such agent or attorney. The Specified Mexico Collateral Agent shall not be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it or its Affiliate, except to the extent a court of competent jurisdiction determines in a final and non-appealable judgment that the Specified Mexico Collateral Agent acted with gross negligence or willful misconduct in the selection of such agent or attorney-in-fact.

8.3. Rights as a Specified Mexico Collateral Claimholder. The Person serving as the Specified Mexico Collateral Agent hereunder shall have the same rights and powers in its capacity as a Specified Mexico Collateral Claimholder that it holds as any other Specified Mexico Collateral Claimholder and may exercise the same as though it were not the Specified Mexico Collateral Agent and, to the extent applicable, the term "Specified Mexico Collateral Claimholder" or "Specified Mexico Collateral Claimholders" or (as applicable) "Term Agent", "Term Claimholders", "DIP Term Agent", or "DIP Term Claimholders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Specified Mexico Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may act in any advisory capacity for and generally engage in any kind of business with any Grantor or any Subsidiary or other Affiliate thereof as if such Person were not the Specified Mexico Collateral Agent hereunder and without any duty to account therefor to any other Specified Mexico Collateral Claimholder.

8.4. Exculpatory Provisions.

(a) The Specified Mexico Collateral Agent shall have no duties to the Specified Mexico Collateral Claimholders except those expressly set forth herein and in the Specified Mexico Collateral Documents. Neither the Specified Mexico Collateral Agent nor any of its officers, directors, employees or agents shall be liable to any Specified Mexico Collateral Claimholder for any action taken or omitted by the Specified Mexico Collateral Agent or any of its officers, directors, employees and agents, as the case may be, hereunder or in connection herewith, except to the extent caused by its or their own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable order. Without limiting the generality of the foregoing, the Specified Mexico Collateral Agent:

(i) shall not be subject to any fiduciary or other implied duties of any kind or nature to any Person, regardless of whether an ABL Default or Term Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Specified Mexico Collateral Documents that the Specified Mexico Collateral Agent is required to exercise as directed in writing by the DIP ABL Agent (or, following the Discharge of ABL Obligations, the DIP Term Agent); provided that the Specified Mexico Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any ABL Loan Document, any Term Loan Document (in such case, only following the Discharge of ABL Obligations), this Agreement, the Financing Order or applicable law;

(iii) shall not, except as expressly set forth herein and in the Specified Mexico Collateral Documents have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Person serving as the Specified Mexico Collateral Agent or any of its Affiliates in any capacity;

(iv) shall not be liable for any action taken or not taken by it (A) with the consent or at the request of the DIP ABL Agent (or, following the Discharge of ABL Obligations, the DIP Term Agent) or (B) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable order, which may include reliance in good faith on a certificate of an authorized officer of the Company stating that such action is permitted by the terms of this Agreement (provided that, in the case of any certificate regarding any release of Specified Mexico Collateral or containing any direction to disregard the instructions of DIP ABL Agent (or, following the Discharge of ABL Obligations, the DIP Term Agent), the Specified Mexico Collateral Agent may only rely upon such certificate of an authorized officer of the Company with the prior written consent of DIP ABL Agent (or, following the Discharge of ABL Obligations, the DIP Term Agent); and shall be deemed not to have knowledge of any ABL Default or Term Default unless and until written notice describing such ABL Default or Term Default is given by the Company to the Specified Mexico Collateral Agent or by an Agent to the Specified Mexico Collateral Agent in accordance herewith or with the Specified Mexico Collateral Documents;

(v) shall not be liable for any lack of perfection or timing of perfection, avoidance, as a preference, fraudulent conveyance or otherwise, of any Specified Mexico Collateral or any Specified Mexico Collateral Document;

(vi) shall not 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 Specified Mexico Collateral Document, (B) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any ABL Default, Term Default or other default, (D) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Specified Mexico Collateral Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Specified Mexico Collateral Documents, (E) the value or the sufficiency of the Specified Mexico Collateral, or (F) the satisfaction of any condition set forth in any Specified Mexico Collateral Document;

(vii) the Specified Mexico Collateral Agent, in its capacity as such, shall not have any fiduciary duties or contractual obligations of any kind or nature under any ABL Loan Document or Term Loan Document (but shall be entitled to all protections provided to the Specified Mexico Collateral Agent, or any sub-agent, therein);

(viii) with respect to the Specified Mexico Collateral Documents, may conclusively assume that the Grantors have complied with all of their obligations thereunder unless advised in writing by an Agent thereunder to the contrary specifically setting forth the alleged violation;

(ix) whenever reference is made in any Specified Mexico Collateral Document to any action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Specified Mexico Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Specified Mexico Collateral Agent, it is understood that in all cases the Specified Mexico Collateral Agent shall be acting, giving, withholding, suffering, omitting, making or otherwise undertaking and exercising the same (or shall not be undertaking and exercising the same) solely as directed in writing by the DIP ABL Agent (or, following the Discharge of ABL Obligations, the DIP Term Agent); this provision is intended solely for the benefit of the Specified Mexico Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim under or in relation to any Specified Mexico Collateral Document, or confer any rights or benefits on any party hereto or thereto;

(x) notwithstanding any other provision of this Agreement or the Specified Mexico Collateral Documents to the contrary, the Specified Mexico Collateral Agent shall not be liable for any indirect, incidental, consequential, punitive or special losses or damages, regardless of the form of action and whether or not any such losses or damages were foreseeable or contemplated; and

(xi) the Specified Mexico Collateral Agent shall not be required to expend or risk any of its own funds or otherwise incur any financial or other liability in the performance of any of its duties hereunder, and shall not be obligated to take any legal or other action hereunder, which might in its judgment involve or cause it to incur any expense or liability, unless it shall have been furnished with acceptable indemnification.

(b)

(i) The Grantors agree that they shall defend and be jointly and severally liable to reimburse and indemnify the Specified Mexico Collateral Agent (and its Affiliates, officers, directors, employees, attorneys and agents ("Specified Mexico Collateral Agent Related Persons")) for reasonable expenses actually incurred by the Specified Mexico Collateral Agent on behalf of the Specified Mexico Collateral Claimholders in connection with the execution, delivery, administration and enforcement of this Agreement and each Specified Mexico Collateral Document and from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, actual reasonable expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Specified Mexico Collateral Agent, in any way relating to or arising out of this Agreement, any Specified Mexico Collateral Document or any other document delivered in connection herewith or the transactions contemplated hereby, or the enforcement of any of the terms hereof or thereof (collectively, the "Specified Mexico Collateral Agent Indemnified Liabilities"), in each case, except to the extent caused by its gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable order.

(ii) The DIP ABL Agent, on behalf of the ABL Claimholders, and the DIP Term Agent, on behalf of the DIP Term Claimholders, hereby agree that each ABL Claimholder (other than the ABL Agent) and each DIP Term Claimholder (other than the DIP Term Agent) is and shall be obligated to indemnify upon demand the Specified Mexico Collateral Agent (and any sub-agent thereof) and any Specified Mexico Collateral Agent Related Person thereof (to the extent not reimbursed by or on behalf of the Grantors and without limiting the obligation of the Grantors to do so) ratably in accordance with each of the ABL Claimholders' and DIP Term Claimholders' respective Ratable Shares (determined as of the time that the applicable indemnity payment is sought (or if such indemnity payment is sought after the date on which Discharge of ABL Obligations and Discharge of DIP Term Loan Obligations have occurred, in accordance with their respective Pro Rata Shares immediately prior to such date)), and hold harmless the Specified Mexico Collateral Agent (and each sub-agent thereof) and each Specified Mexico Collateral Agent Related Person from and against, any and all Specified Mexico Collateral Agent Indemnified Liabilities that may at any time be imposed on, incurred by or asserted against the Specified Mexico Collateral Agent (or sub-agent thereof) or any Specified Mexico Collateral Agent Related Person; provided that (i) no ABL Claimholder or DIP Term Claimholder shall be liable for the payment to the Specified Mexico Collateral Agent (or any sub-agent thereof) or any Specified Mexico Collateral Agent Related Person of any portion of such Specified Mexico Collateral Agent Indemnified Liabilities resulting from such Person's own gross negligence or willful misconduct as determined by the final non-appealable judgment of a court of competent jurisdiction; provided further that no action taken in accordance with the directions of an ABL Agent (or following the Discharge of ABL Obligations, the DIP Term Agent) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 8.4(b) and (ii) in the case of any Specified Mexico Collateral Agent Indemnified Liabilities arising prior to the Discharge of ABL Obligations, Ratable Share shall be calculated in accordance with the proviso to the definition of Ratable Share. Without limitation of the foregoing, the DIP ABL Agent, on behalf of the ABL Claimholders, and the DIP Term Agent, on behalf of the DIP Term Claimholders, hereby agree that each ABL Claimholder (other than the ABL Agent) and each DIP Term Claimholder (other than the DIP Term Agent) shall reimburse the Specified Mexico Collateral Agent upon demand ratably in accordance with the ABL Claimholders' and DIP Term Claimholders' respective Ratable Shares (determined as of the time that the applicable reimbursement payment is sought (or if such reimbursement payment is sought after the date on which Discharge of ABL Obligations and Discharge of DIP Term Loan Obligations have occurred, in accordance with their respective Pro Rata Shares immediately prior to such date)), for any costs or out-of-pocket expenses incurred by the Specified Mexico Collateral Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Specified Mexico Collateral Document, or any document contemplated by or referred to herein to therein, to the extent that the Specified Mexico Collateral Agent is not reimbursed for such expenses by or on behalf of the Grantors (and without limiting their obligation to do so).

(c) The obligations under this Section 8.4 shall survive payment of the Specified Mexico Collateral Obligations and termination of this Agreement and all of the Specified Mexico Collateral Documents.

(d) Each ABL Claimholder and each DIP Term Claimholder acknowledges that, in addition to acting as the initial Specified Mexico Collateral Agent, Cortland Capital Market Services LLC, also serves as DIP Term Agent and Existing Term Agent, and each ABL Claimholder and each DIP Term Claimholder hereby waives any right to make any objection or claim against Cortland Capital Market Services LLC, any of its Affiliates or its counsel (or any successor Specified Mexico Collateral Agent, any of its Affiliates or its counsel) based on any alleged conflict of interest or breach of duties arising from the Specified Mexico Collateral Agent, Cortland Capital Market Services LLC, or its Affiliates also serving in such other capacities. Any knowledge obtained by the DIP Term Agent, the Existing Term Agent, Cortland Capital Market Services LLC in its individual capacity and not as Specified Mexico Collateral Agent or any Affiliate of Cortland Capital Market Services LLC, regarding any Grantor or the nature of the transaction described herein, including a default or potential ABL Default or Term Default shall not be imputed to the Specified Mexico Collateral Agent.

8.5. Reliance by Specified Mexico Collateral Agent. The Specified Mexico Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it in good faith to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Specified Mexico Collateral Agent also may conclusively rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Specified Mexico Collateral Agent may consult with legal counsel, at the expense of the Company and Grantors (who may include, but shall not be limited to, counsel for the Company or counsel for the DIP Term Agent or the DIP ABL Agent), 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 written advice of any such counsel, accountants or experts.

8.6. Resignation of Specified Mexico Collateral Agent. The Specified Mexico Collateral Agent may at any time give written notice of its resignation as Specified Mexico Collateral Agent under this Agreement and the other Specified Mexico Collateral Documents to each Agent and the Company. Upon receipt of any such notice of resignation, the ABL Agent and DIP Term Agent shall have the right to appoint a successor approved by the DIP ABL Agent and the DIP Term Agent; provided, that DIP ABL Agent shall have the sole right (but not the obligation) to appoint itself as the successor Specified Mexico Collateral Agent without the requirement of consent from the DIP Term Agent or any other Specified Mexico Collateral Claimholder, so long as the DIP ABL Agent serves as Specified Mexico Collateral Agent for the benefit of all Specified Mexico Collateral Claimholders; provided, further that the DIP ABL Agent shall provide the DIP Term Agent with at least three (3) Business Days' prior written notice of such appointment. If no such successor shall have been so appointed by the ABL Agent and the DIP Term Agent and shall have accepted such appointment (or if DIP ABL Agent shall not have appointed itself as successor Specified Mexico Collateral Agent in accordance with the preceding sentence) within 30 days after the retiring Specified Mexico Collateral Agent gives notice of its resignation, then the retiring Specified Mexico Collateral Agent may, on behalf of the Specified Mexico Collateral Claimholders, appoint a successor Specified Mexico Collateral Agent; provided that if no successor Specified Mexico Collateral Agent has accepted such appointment within thirty (30) days after its notice of resignation is given, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Specified Mexico Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Specified Mexico Collateral Documents and (b) all payments, communications and determinations provided to be made by, to or through the Specified Mexico Collateral Agent shall instead be made by or to the ABL Agent and the DIP Term Agent directly, until such time as the ABL Agent and the DIP Term Agent appoint a successor Specified Mexico Collateral Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Specified Mexico Collateral Agent hereunder and under the Specified Mexico Collateral Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Specified Mexico Collateral Agent, and the retiring Specified Mexico Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the other Specified Mexico Collateral Documents (if not already discharged therefrom as provided above in this Section). After the retiring Specified Mexico Collateral Agent's resignation hereunder and under the other Specified Mexico Collateral Documents, the provisions of this Article (including the indemnification and exculpatory provisions herein and in the ABL Loan Agreements and DIP Term Loan Agreement), shall continue in effect for the benefit of such retiring Specified Mexico Collateral Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while the retiring Specified Mexico Collateral Agent was acting as Specified Mexico Collateral Agent, as sub-agent for the applicable Agent. Upon any notice of resignation of the Specified Mexico Collateral Agent hereunder and under the other Specified Mexico Collateral Documents, the Grantors agree to use commercially reasonable efforts to transfer (and maintain the validity and priority of) the Liens in favor of the retiring Specified Mexico Collateral Agent under the Specified Mexico Collateral Documents to the successor Specified Mexico Collateral Agent as promptly as practicable.

8.7. Collateral and Guaranty Matters. Each of the Specified Mexico Collateral Claimholders irrevocably authorizes the Specified Mexico Collateral Agent, at the written direction of the DIP ABL Agent (or, following the Discharge of ABL Obligations, the DIP Term Agent):

(a) to release any Lien on any property granted to or held by the Specified Mexico Collateral Agent under any Specified Mexico Collateral Document (x) in accordance with Section 5.1 hereof and the ABL Loan Documents (or, after the Discharge of ABL Loan Obligations, the Loan Documents (as defined in the DIP Term Loan Agreement)), (y) in accordance with each of the ABL Loan Documents and the Term Loan Documents (other than those relating solely to the Existing Term Loan Agreement), or (z) upon receipt of a written request from the Company, acknowledged and agreed to by DIP ABL Agent and the DIP Term Agent (or, after the Discharge of ABL Loan Obligations, only the DIP Term Agent) stating that the releases of such Lien is permitted by the terms of each Specified Mexico Collateral Document, the ABL Loan Documents and the Term Loan Documents (other than those relating solely to the Existing Term Loan Agreement); and

(b) to release any Grantor from its obligations under the Specified Mexico Collateral Documents upon receipt of a written request from the Company acknowledged and agreed to by DIP ABL Agent and the DIP Term Agent (or, after the Discharge of ABL Loan Obligations, only the DIP Term Agent) stating that such release is permitted by the terms of each Specified Mexico Collateral Document.

8.8. Distributions and Consents. In making any distributions to the Agents for payment in accordance with Article VI hereof, the Specified Mexico Collateral Agent shall rely upon information supplied to it by each Agent with respect to the amounts of Specified Mexico Collateral Obligations owing to the Specified Mexico Collateral Claimholders represented by such Agent; provided that until the Discharge of ABL Obligations, any such distributions shall be made to DIP ABL Agent or such other ABL Agent as may be specified by DIP ABL Agent. Each Agent hereby agrees, on three Business Days' telecopy, e-mail or similar written notice from the Specified Mexico Collateral Agent, to deliver to the Specified Mexico Collateral Agent in writing, including by facsimile or other electronic transmission, a statement of the outstanding balance of the Specified Mexico Collateral Obligations, if any, owing to such Specified Mexico Collateral Claimholders represented by such Agent as of the date or dates specified in such notice. The Specified Mexico Collateral Agent may rely conclusively, and shall be fully protected in so relying, on any determination made in accordance with the provisions of this Section 8.8 (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to any Grantor, any Specified Mexico Collateral Claimholder or any other Person as a result of such determination taken in good faith in the absence of the Specified Mexico Collateral Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable order.

IX.
MISCELLANEOUS.

9.1. **Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of any ABL Loan Document (other than the Financing Order) or Term Loan Document (other than the Financing Order), the provisions of this Agreement shall govern and control.

9.2. **Effectiveness; Continuing Nature of this Agreement; Severability.** This Agreement shall become effective when executed and delivered by the parties hereto (it being understood that this Agreement shall become effective among the Grantors, the ABL Claimholders and the Term Claimholders upon execution and delivery of this Agreement by the Existing ABL Agent, the DIP ABL Agent, the Existing Term Agent, the DIP Term Agent, the Specified Mexico Collateral Agent and the Grantors party hereto on the date hereof). This is a continuing agreement of Lien subordination (as opposed to an agreement of debt or claim subordination), and the ABL Claimholders and the Term Claimholders may continue, at any time and without notice to any other Agent or Claimholder, to extend credit and other financial accommodations and lend monies to or for the benefit of any Grantor in reliance hereon. Each of the Agents, on behalf of the applicable Claimholders, as applicable, hereby irrevocably, absolutely, and unconditionally waives any right any Claimholder may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Consistent with, but not in limitation of, the preceding sentence, each of the Agents, on behalf of the applicable Claimholders irrevocably acknowledges that this Agreement constitutes a "subordination agreement" within the meaning of both New York law and Section 510(a) of the Bankruptcy Code. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver or trustee for any Grantor (as applicable) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect subject to the rights provided to Prior Lien Claimholders under Section 6.4:

(a) with respect to the ABL Agents, the ABL Claimholders and the ABL Obligations, the date on which the Discharge of ABL Obligations has occurred in accordance with the terms of this Agreement; and

(b) with respect to the Term Agents, the Term Claimholders and the Term Obligations, the date on which the Discharge of Term Obligations has occurred in accordance with the terms of this Agreement.

9.3. **Amendments; Waivers.** Except as provided in the following sentence, no amendment, modification or waiver of any of the provisions of this Agreement shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, no Grantor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent any additional liability or obligation is imposed on it or any existing liability or obligations is increased.

9.4. Information Concerning Financial Condition of the Company and Their Subsidiaries. Each Agent and Claimholder shall be responsible for keeping themselves informed of (a) the financial condition of the Grantors and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Obligations and the Term Obligations. No Claimholder shall have any duty to advise any other Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event any Agent or other Claimholder undertakes at any time or from time to time to provide any such information to any of the other Claimholders, it or they shall be under no obligation, (i) to make, and shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (ii) to provide any additional information or to provide any such information on any subsequent occasion, (iii) to undertake any investigation, or (iv) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

9.5. Subrogation. With respect to the value of any payments or distributions in cash, property or other assets that any of the Subordinated Lien Claimholders actually pay over to the Prior Lien Agent or the Prior Lien Claimholders under the terms of this Agreement, the Subordinated Lien Claimholders shall be subrogated to the rights of such Prior Lien Claimholders; provided, however, that each Subordinated Lien Agent, on behalf of the Subordinated Lien Claimholders, hereby agrees not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Prior Lien Obligations has occurred. The Grantors acknowledge and agree that, to the extent permitted by applicable law, the value of any payments or distributions in cash, property or other assets received by the Subordinated Lien Claimholders that are paid over to the Prior Lien Claimholders pursuant to this Agreement shall not reduce any of the Subordinated Lien Obligations. Notwithstanding the foregoing provisions of this Section 9.5, none of the Subordinated Lien Claimholders shall have any claim against any of the Prior Lien Claimholders for any impairment of any subrogation rights herein granted to the Subordinated Lien Claimholders.

9.6. SUBMISSION TO JURISDICTION; WAIVERS.

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PERSON ARISING OUT OF OR RELATING HERETO MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH AGENT, FOR ITSELF AND ON BEHALF OF THE APPLICABLE TERM CLAIMHOLDERS (IN THE CASE OF A TERM AGENT), THE APPLICABLE ABL CLAIMHOLDERS (IN THE CASE OF AN ABL AGENT) AND SPECIFIED MEXICO COLLATERAL AGENT, FOR ITSELF AND ON BEHALF OF THE SPECIFIED MEXICO COLLATERAL CLAIMHOLDERS IRREVOCABLY:

(1) AGREES THAT THE ONLY NECESSARY PARTIES TO ANY AND ALL JUDICIAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE THE PARTIES HERETO, EXCEPT WHERE IN ANY SUCH JUDICIAL PROCEEDING RELIEF (INCLUDING INJUNCTIVE RELIEF OR THE RECOVERY OF MONEY) IS BEING SOUGHT DIRECTLY AGAINST OR FROM A PERSON THAT IS NOT A PARTY AND EXCEPT THAT, IN ANY SUCH JUDICIAL PROCEEDINGS AMONG ANY Term AGENT, ANY ABL AGENT OR SPECIFIED MEXICO COLLATERAL AGENT THAT DOES NOT SEEK ANY RELIEF AGAINST OR FROM ANY GRANTOR, THE GRANTORS SHALL NOT BE NECESSARY PARTIES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND CONSISTENT WITH THE PROVISIONS OF SECTIONS 9.14 AND 9.17, NONE OF THE ABL CLAIMHOLDERS (OTHER THAN THE ABL AGENTS), THE Term CLAIMHOLDERS (OTHER THAN THE Term AGENTS) OR THE SPECIFIED MEXICO COLLATERAL CLAIMHOLDERS (OTHER THAN THE SPECIFIED MEXICO COLLATERAL AGENT) SHALL BE NECESSARY OR OTHERWISE APPROPRIATE PARTIES TO ANY SUCH JUDICIAL PROCEEDINGS, UNLESS IN SUCH JUDICIAL PROCEEDING SUMS ARE BEING SOUGHT TO BE RECOVERED DIRECTLY FROM SUCH PERSONS, INCLUDING PURSUANT TO SECTION 4.2 OR THE PROVISIONS OF THIS AGREEMENT ARE SEEKING TO BE ENFORCED DIRECTLY AGAINST SUCH PERSONS.

(2) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(3) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;

(4) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PERSON (AND IN THE CASE OF A PARTY, AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.7); AND

(5) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (3) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PERSON IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

(b) WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OF THE ABL LOAN DOCUMENTS, ANY OF THE Term LOAN DOCUMENTS OR ANY OF THE SPECIFIED MEXICO COLLATERAL DOCUMENTS. EACH OF THE PARTIES 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, THE ABL LOAN DOCUMENTS, THE Term LOAN DOCUMENTS AND THE SPECIFIED MEXICO COLLATERAL DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.6.

9.7. Notices. All notices permitted or required under this Agreement need be sent only to the applicable Term Agent and the applicable ABL Agent, as applicable, in order to be effective and otherwise binding on any applicable Claimholder. If any notice is sent for whatever reason to the other Term Claimholders or the ABL Claimholders, such notice shall also be sent to the applicable Agent. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by overnight courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex during normal business hours, or three Business Days after depositing it in the United States certified mails (return receipt requested) with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

9.8. Further Assurances. The ABL Agent, on behalf of the ABL Claimholders, each Term Agent, on behalf of the applicable Term Claimholders, Specified Mexico Collateral Agent, on behalf of the Specified Mexico Collateral Claimholders, and the Grantors, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as any other Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement. Each of the Term Agents and the ABL Agent agrees that if it sends any Enforcement Notice to another Agent, it shall be sent to all of the Agents.

9.9. APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

9.10. Specific Performance. Each of the ABL Agents, the Term Agents and Specified Mexico Collateral Agent may demand specific performance of this Agreement. Each ABL Agent, on behalf of itself and the applicable ABL Claimholders, each Term Agent, on behalf of itself and the applicable Term Claimholders, and Specified Mexico Collateral Agent, on behalf of itself and the Specified Mexico Collateral Claimholders hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any ABL Agent or the other ABL Claimholders or any Term Agent or the other Term Claimholders or Specified Mexico Collateral Agent or the other Specified Mexico Collateral Claimholders, as applicable. Without limiting the generality of the foregoing or of the other provisions of this Agreement, in seeking specific performance in any Insolvency or Liquidation Proceeding, a Collateral Agent may seek such relief as if it were the "holder" of the claims of the other Collateral Agent's Claimholders under Section 1126(a) of the Bankruptcy Code or otherwise had been granted an irrevocable power of attorney by the other Agent's Claimholders.

9.11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

9.12. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

9.13. Authorization. By its signature, each party hereto represents and warrants to the other parties hereto that the individual signing this Agreement on its behalf is duly authorized to execute this Agreement. Each Term Agent hereby represents that it is authorized to, and by its signature hereon does, bind the other Term Claimholders represented by it to the terms of this Agreement. Each ABL Agent hereby represents that it is authorized to, and by its signature hereon does, bind the other ABL Claimholders represented by it to the terms of this Agreement.

9.14. No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of (and shall be binding upon) each of the Collateral Agents and the other Claimholders and their respective successors and assigns.

9.15. Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the respective relative rights of the ABL Claimholders and the Term Claimholders. No Grantor or any other creditor thereof shall have any rights hereunder, and no Grantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair as between the Grantors and the ABL Agents and the other ABL Claimholders, or as between the Grantors and the Term Agents and the other Term Claimholders, or as between the Grantors and the Specified Mexico Collateral Agent and the other Specified Mexico Collateral Claimholders the obligations of any Grantor, which are absolute and unconditional, to pay principal, interest, fees and other amounts as provided in the other ABL Loan Documents, the other Term Loan Documents or the Specified Mexico Collateral Documents, respectively, including as and when the same shall become due and payable in accordance with their terms.

9.16. Marshalling of Assets. Each Subordinated Lien Agent, on behalf of the applicable Subordinated Lien Claimholders, hereby irrevocably, absolutely, and unconditionally waives any and all rights or powers any Subordinated Lien Claimholder may have at any time under applicable law or otherwise to have its Subordinated Lien Collateral, or any part thereof, marshaled upon any foreclosure or other enforcement of such Subordinated Lien Agent's Liens.

9.17. Exclusive Means of Exercising Rights under this Agreement. The applicable Term Claimholders shall be deemed to have irrevocably appointed the applicable Term Agent and the applicable ABL Claimholders shall be deemed to have irrevocably appointed the applicable ABL Agent, as their respective and exclusive agents hereunder. Consistent with such appointment, the Term Claimholders, and the ABL Claimholders further shall be deemed to have agreed that their respective Agents (and not any individual Claimholder or group of Claimholders) shall have the exclusive right to exercise any rights, powers, and/or remedies under or in connection with this Agreement (including bringing any action to interpret or otherwise enforce the provisions of this Agreement and, with respect to any Mexico Security Trust, issuing instructions, directions or requests to the Mexico Security Trustee in respect thereof) or the Collateral. Specifically, but without limiting the generality of the foregoing, each Term Claimholder (other than any Term Agent) and each ABL Claimholder (other than the ABL Agent), shall not be entitled to take or file, but instead shall be precluded from taking or filing (whether in any Insolvency or Liquidation Proceeding or otherwise), any action, judicial or otherwise, to enforce any right or power or pursue any remedy under this Agreement (including any declaratory judgment or other action to interpret or otherwise enforce the provisions of this Agreement). For purposes of any Collateral located in Mexico, and subject to the terms provided under the ABL Loan Agreement, the applicable ABL Claimholders shall be deemed to have irrevocably authorized the ABL Agent to delegate to any other Agent the *comisión mercantil con representación* granted to such ABL Agent pursuant to Article 280 and any other applicable Articles of the Mexican Federal Commerce Code (*Código de Comercio*).

9.18. Interpretation. This Agreement is a product of negotiations among representatives of, and has been reviewed by counsel to, the Term Agents, the ABL Agent and the Grantors and is the product of those Persons on behalf of themselves and the Term Claimholders (in the case of the Term Agents) and the ABL Claimholders (in the case of the ABL Agent). Accordingly, this Agreement's provisions shall not be construed against, or in favor of, any part or other Person merely by virtue of that party or other Person's involvement, or lack of involvement, in the preparation of this Agreement and of any of its specific provisions.

9.19. Relative Priorities of Term Obligations. The parties hereto acknowledge and agree that the DIP Term Obligations and the Liens securing the DIP Term Obligations shall be senior in all respects to the other Existing Term Obligations and the Liens securing such other Existing Term Obligations, respectively, including any adequate protection claims and liens in respect thereof, in each case, as provided in the Financing Orders.

9.20. Amendment and Restatement. This Agreement amends and restates the Existing Intercreditor Agreement in its entirety effective as of the date hereof.

[Signature Pages Follow]

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

ABL Agent:

JPMORGAN CHASE BANK, N.A.,
as Existing ABL Agent and DIP ABL
Agent and not in its individual capacity

By: /s/ Donna DiForio
Name: Donna DiForio
Title: Authorized Officer

J.P. MORGAN EUROPE LIMITED
as Existing Netherlands ABL Agent and DIP ABL Sub-
Agent and not in its individual capacity

By: /s/ Matthew Sparkes
Name: Matthew Sparkes
Title: Authorized Officer

Notice Address:

Asset Based Lending
925 Westchester Avenue, 3rd Floor
White Plains, New York 10604

Attn: Donna DiForio/Libbey Glass Account Manager
and

Asset Based Lending
25 Bank Street
Canary Wharf
London, E14 5JP
Attention: Matthew Sparkes

Term Agent:

CORTLAND CAPITAL MARKET SERVICES LLC, as Existing Term Agent and DIP Term Agent and not in its individual capacity

By: /s/ Winnalynn N. Kantaris
Name: Winnalynn N. Kantaris
Title: Associate General Counsel

Notice Address:

Cortland Capital Market Services LLC
225 W Washington Street, 9th Floor
Chicago, IL 60606
Attn: Ashwinee Sawh and Legal Department
Email:
Cortland_Succesor_Agent@cortlandglobal.com
and legal@cortlandglobal.com

with a copy, which copy shall not constitute notice, to:

Arnold & Porter Kaye Scholer LLP
250 W . 55th Street
New York, NY 10019
Attn: Alan Glantz
Email: Alan.Glantz@arnoldporter.com

Signature Page to Amended and Restated Intercreditor Agreement

Specified Mexico Collateral Agent:

CORTLAND CAPITAL MARKET SERVICES LLC, as Specified Mexico Collateral Agent and not in its individual capacity

By: /s/ Winnalyn N. Kantaris
Name: Winnalyn N. Kantaris
Title: Associate General Counsel

Notice Address:

Cortland Capital Market Services LLC
225 W Washington Street, 9th Floor
Chicago, IL 60606
Attn: Ashwinee Sawh and Legal Department
Email:
Cortland_Succesor_Agent@cortlandglobal.com
and legal@cortlandglobal.com

with a copy, which copy shall not constitute notice, to:

Arnold & Porter Kaye Scholer LLP
250 W . 55th Street
New York, NY 10019
Attn: Alan Glantz
Email: Alan.Glantz@arnoldporter.com

Signature Page to Amended and Restated Intercreditor Agreement

Acknowledged and Agreed to by:

Company:

LIBBEY GLASS INC.

By: /s/ Michael P. Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

Notice Address:

Holdings:

LIBBEY INC.

By: /s/ Michael P. Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

Notice Address:

300 Madison Avenue
Toledo, OH 43604
Attn: Juan Amezquita

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Company Subsidiaries:

SYRACUSE CHINA COMPANY
WORLD TABLEWARE INC.
LGA4 CORP.
LGA3 CORP.
THE DRUMMOND GLASS COMPANY
LGC CORP.
LIBBEY.COM LLC
LGFS INC.
LGAC LLC
LGAU CORP.

By: /s/ Michael P. Bauer
Name: Michael P. Bauer
Title: Chief Executive Officer

Notice Address:

300 Madison Avenue
Toledo, OH 43604
Attn: Juan Amezquita

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LIBBEY EUROPE B.V.
LIBBEY EUROPE FINANCE COMPANY B.V.
B.V. KONINKLIJKE NEDERLANDSCHE GLASFABRIEK LEERDAM
LIBBEY MEXICO HOLDINGS B.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Attorney-In-Fact

LIBBEY INTERNATIONAL C.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Senior Vice President, General Counsel and Secretary

LIBBEY MÉXICO, S. DE R.L. DE C.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Attorney-In-Fact

CRISA LIBBEY MÉXICO, S. DE R.L. DE C.V.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Attorney-In-Fact

CRISAL - CRISTALARIA AUTOMÁTICA S.A.

By: /s/ Jennifer Michele Jaffee
Name: Jennifer Michele Jaffee
Title: Chairman of the Board of Directors
with delegated powers

Notice Address:

300 Madison Avenue
Toledo, OH 43604
Attn: Juan Amezquita

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