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): January 19, 2021 (January 15, 2021)

United States Steel Corporation
(Exact Name of Registrant as Specified in Charter)

Delaware	1-16811	25-1897152
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**

600 Grant Street,
Pittsburgh, PA 15219-2800
(Address of Principal Executive Offices, and Zip Code)

(412) 433-1121
Registrant's Telephone Number, Including Area Code

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communication 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 communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communication 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 Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☐

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	X	New York Stock Exchange
Common Stock	X	Chicago Stock Exchange

Item 2.01. Completion of Acquisition or Disposition of Assets.

On December 8, 2020, United States Steel Corporation (the "Corporation") announced that U.S. Steel Holdco LLC (the "Purchaser"), a wholly-owned subsidiary of the Corporation, notified Big River Steel Holdings LLC ("BRS") of Purchaser's decision to exercise its right to acquire the remaining ownership interest in BRS (the "Call Exercise"). In connection with the Call Exercise, on December 15, 2020, the Purchaser, BRS and certain members of BRS entered into an equity purchase agreement providing for the consummation of the Call Exercise ("Call Option Purchase Agreement" and the transactions contemplated thereby, collectively the "Transaction"). On January 15, 2021 (the "Effective Time"), the Transaction was consummated.

Pursuant to the terms of the Call Option Purchase Agreement, at the Effective Time, each member holding Class B Common Units of BRS received an amount equal to its *pro rata* share of the purchase price for the Class B Common Units of BRS and each member holding Class C Preferred Units of BRS received an amount equal to its *pro rata* share of the purchase price for the Class C Preferred Units of BRS. The aggregate consideration paid for the remaining ownership interest in BRS was approximately $774 million. The source of the funds for the consideration paid by Purchaser in the Transaction was Purchaser's existing cash on hand.

The foregoing description of the Call Option Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the Call Option Purchase Agreement, a copy of which was filed by the Corporation as Exhibit 2.1 to the Corporation's Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission (the "SEC") on December 18, 2020, which is incorporated herein by reference.

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

Upon consummation of the Transaction, BRS and its subsidiaries became subsidiaries of the Corporation and, therefore, the financial obligations of such subsidiaries arising from the below described agreements are financial obligations of the Corporation and its consolidated subsidiaries.

6.625% Senior Secured Notes due 2029

On September 18, 2020, BRS's indirect subsidiaries Big River Steel LLC and BRS Finance Corp. (together, the "Issuers") issued $900 million in aggregate principal amount of 6.625% Senior Secured Notes due 2029 (Green Bonds) (the "Notes") in a private offering made in the United States to persons reasonably believed to be "qualified institutional buyers" pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"), and outside the United States to non-U.S. persons pursuant to Regulation S under the Securities Act. The Notes were issued pursuant to an indenture, dated as of September 18, 2020 (the "Indenture"), by and among the Issuers, the guarantors named therein and U.S. Bank National Association, as trustee and as collateral agent.

The Notes mature on January 31, 2029. Interest on the Notes is payable semi-annually on January 31 and July 31 of each year, beginning on January 31, 2021.

The obligations under the Notes are fully and unconditionally guaranteed, jointly and severally, on a secured basis by the Issuers' parent company BRS Intermediate Holdings LLC ("BRS Intermediate"), which is a direct subsidiary of BRS, and by all future direct and indirect wholly owned domestic subsidiaries of the Issuers. Additionally, the Notes and related guarantees are secured by (i) first-priority liens on "Notes Priority Collateral" (which generally includes most tangible and intangible assets of the Issuers and the guarantors and all of the equity interests of the Issuers held by BRS Intermediate) shared in equal priority with each other pari passu lien secured party and (ii) second-priority liens on "ABL Priority Collateral" (which generally includes accounts receivable and inventory and certain other related assets of the Issuers and the guarantors) shared in equal priority with each other pari passu lien secured party, in each case subject to permitted liens.

At any time prior to September 15, 2023:

- the Issuers may redeem the Notes in whole or in part at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the redemption date, plus a "make-whole" premium;

- the Issuers may redeem on one or more occasions up to 40% of the aggregate principal amount of Notes, using the proceeds of certain equity offerings, at a redemption price equal to the sum of 106.625% of the principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the redemption date, so long as (i) 50% of the original aggregate principal amount of the Notes remains outstanding and (ii) each such redemption occurs within 180 days of the date of closing of the applicable equity offering; and
- the Issuers may redeem on one or more occasions up to 10% of the original aggregate principal amount of the Notes during each twelve-month period commencing with September 18, 2020 at a redemption price equal to 103.00% of the principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

On or after September 15, 2023, the Issuers may redeem the Notes at the redemption prices set forth in the Indenture plus accrued and unpaid interest, if any, to, but excluding, the redemption date.

If the Issuers or BRS Intermediate experience specified change of control events, the Issuers must make an offer to purchase the Notes at a price equal to 101% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, to the purchase date.

If the Issuers sell assets under specified circumstances, the Issuers must make an offer to purchase the Notes at a price equal to 100% of the aggregate principal amount thereof, plus accrued and unpaid interest, if any, to the purchase date.

The Indenture, among other things, limits the ability of the Issuers and their restricted subsidiaries to:

- incur or guarantee additional indebtedness;
- pay dividends or distributions on, or redeem or repurchase, capital stock and make other restricted payments;
- make investments;
- consummate certain asset sales;
- engage in transactions with affiliates;
- grant or assume liens; and
- consolidate, merge or transfer all or substantially all of their assets.

These covenants are subject to a number of important limitations and exceptions set forth in the Indenture. The Indenture also includes customary events of default.

As of the date hereof, all of the Notes remain outstanding.

The foregoing description of the Indenture does not purport to be complete and is qualified in its entirety by the copy of the Indenture filed herewith as Exhibit 4.1.

ABL Facility

On August 23, 2017, Big River Steel LLC, as Borrower, and BRS Intermediate, as Holdings, entered into a senior secured asset-based revolving credit facility with Goldman Sachs Bank USA, as administrative agent and collateral agent, and the other lenders party thereto, and subsequently amended such facility (as amended, the "ABL Facility") by entering into the First Amendment to ABL Credit Agreement, dated as of September 10, 2020 (as so amended and restated, the "Credit Agreement"), with Goldman Sachs Bank USA, as administrative agent and collateral agent, and the other lenders party thereto. The ABL Facility is secured by first-priority liens on the ABL Priority Collateral and second priority liens on the Notes Priority Collateral, in each case subject to permitted liens.

The ABL Facility provides for $350 million of borrowings and matures on August 23, 2022. Loans under the ABL Facility bear interest, at the option of the Borrower, at either (a) a base rate plus a margin ranging from 0.75% to 1.25%, payable quarterly, or (b) LIBOR for the relevant interest period plus a margin ranging from 1.75% to 2.25%, payable on the last day of selected interest periods (or at the end of every three months in the case of interest periods of longer than three months). The applicable margin is based on the level of excess availability under the ABL Facility. The ABL Facility also requires a commitment fee on the unused portion of the ABL Facility, which will either be 0.25% or 0.375% per annum to be determined quarterly based on the Borrower's utilization levels.

The ABL Facility includes affirmative and negative covenants that are customary for facilities of this type. The Borrower is required to maintain a fixed charge coverage ratio that is tested whenever excess availability, as defined in the Credit Agreement, falls below a certain level. The fixed charge coverage ratio, as defined in the Credit Agreement, requires the Borrower to maintain a minimum ratio of "EBITDA" (as defined in the Credit Agreement) to the amount of fixed charges for the twelve consecutive months prior to the date on which the ratio is tested. A springing minimum fixed charge coverage ratio of 1.00 to 1.00, calculated quarterly, will apply only if excess availability falls below a specified threshold. The ABL Facility also includes customary events of default.

As of the date hereof, there are no loans outstanding under the ABL Facility.

The foregoing description of the Credit Agreement does not purport to be complete and is qualified in its entirety by the copy of the Credit Agreement filed herewith as Exhibit 10.1.

2020 Arkansas Development Finance Authority Bonds

On September 10, 2020, Big River Steel LLC, as Borrower, BRS Finance Corp. ("BRS Finance") and BRS Intermediate entered into a Bond Financing Agreement (the "2020 Bond Financing Agreement") with the Arkansas Development Finance Authority (the "Arkansas Issuer") whereby the Arkansas Issuer agreed to loan the Borrower proceeds of the sale of its $265 million 4.75% Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds) (the "2020 Bonds") upon the terms and conditions set forth therein, to (i) finance or refinance the expansion of BRS's Electric Arc Furnace steel mill and (ii) fund costs of issuance of the 2020 Bonds.

The obligations under the 2020 Bond Financing Agreement are fully and unconditionally guaranteed on a senior secured basis, jointly and severally, by BRS Intermediate, BRS Finance and all future direct and indirect wholly owned domestic subsidiaries of the Borrower and secured by, subject to permitted liens, (i) first-priority liens on Notes Priority Collateral shared in equal priority with each other pari passu lien secured party, and (ii) second-priority liens on the ABL Priority Collateral shared in equal priority with each other pari passu lien secured party.

The 2020 Bonds bear interest at 4.75% and have a final maturity of September 1, 2049. Interest on the 2020 Bonds is payable semi-annually on each March 1 and September 1, commencing on March 1, 2021. The 2020 Bonds are subject to optional redemption during the periods and at the respective redemption prices (expressed as a percentage of the principal amount of the 2020 Bonds to be redeemed shown below), plus, in each case, accrued interest on such 2020 Bonds to be redeemed to the date fixed for redemption.

Redemption Dates	Redemption Prices
September 1, 2027 to August 31, 2028	103%
September 1, 2028 to August 31, 2029	102%
September 1, 2029 to August 31, 2030	101%
On and after September 1, 2030	100%

Prior to September 1, 2027, the 2020 Bonds are subject to optional redemption, in whole or in part, at a redemption price equal to the greater of: (i) 100% of the principal amount of the 2020 Bonds to be redeemed, plus accrued and unpaid interest to the date fixed for redemption; or (ii) the amount calculated by a quotation agent equal to the sum of the present values of the remaining scheduled payments of principal and interest on the 2020 Bonds to be redeemed (exclusive of interest accrued to the date fixed for redemption), from and including the date fixed for redemption to September 1, 2027, discounted from the scheduled due dates for such payments to the date fixed for redemption on a semiannual basis at a discount rate equal to the applicable tax-exempt municipal bond rate for the 2020 Bonds to be redeemed, plus accrued and unpaid interest to the date fixed for redemption.

The 2020 Bonds are subject to extraordinary mandatory redemption, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the date fixed for redemption, from surplus funds at the earlier of the completion of the tax-exempt project or expiration of a certain period for construction financings, and upon an event of taxability.

The 2020 Bonds are subject to substantially similar asset sale offer and change of control offer provisions, affirmative and negative covenants, events of default and remedies as the Indenture governing the Notes.

As of the date hereof, all of the 2020 Bonds remain outstanding.

The foregoing description of the 2020 Bonds and the 2020 Bond Financing Agreement does not purport to be complete. The description of the 2020 Bond Financing Agreement provisions is qualified in its entirety by the copy of the 2020 Bond Financing Agreement and related Definitions Annex filed herewith as Exhibit 10.2.1 and Exhibit 10.2.2, respectively.

2019 Arkansas Development Finance Authority Bonds

On May 31, 2019, Big River Steel LLC, as Borrower, BRS Finance and BRS Intermediate entered into a Bond Financing Agreement (the "2019 Bond Financing Agreement") with the Arkansas Issuer whereby the Arkansas Issuer agreed to loan the Borrower proceeds of the sale of its $487 million 4.50% Industrial Development Revenue Bonds (Big River Steel Project), Series 2019 (the "2019 Bonds") upon the terms and conditions set forth therein, to (i) finance the expansion of BRS's Electric Arc Furnace steel mill and (ii) fund costs of issuance of the 2019 Bonds.

The obligations under the 2019 Bond Financing Agreement are fully and unconditionally guaranteed on a senior secured basis, jointly and severally, by BRS Intermediate, BRS Finance and all future direct and indirect wholly owned domestic subsidiaries of the Borrower and secured by, subject to permitted liens, (i) first-priority liens on Notes Priority Collateral shared in equal priority with each other pari passu lien secured party, and (ii) second-priority liens on the ABL Priority Collateral shared in equal priority with each other pari passu lien secured party.

The 2019 Bonds bear interest at 4.50% and have a final maturity of September 1, 2049. Interest on the 2019 Bonds is payable semi-annually on each March 1 and September 1. The 2019 Bonds are subject to optional redemption during the periods and at the respective redemption prices (expressed as a percentage of the principal amount of the 2019 Bonds to be redeemed shown below), plus, in each case, accrued interest on such 2019 Bonds to be redeemed to the date fixed for redemption.

Redemption Dates	Redemption Prices
September 1, 2026 to August 31, 2027	103%
September 1, 2027 to August 31, 2028	102%
September 1, 2028 to August 31, 2029	101%
On and after September 1, 2029	100%

Prior to September 1, 2026, the 2019 Bonds are not redeemable.

The 2019 Bonds are subject to certain mandatory sinking fund redemption provisions, as well as extraordinary mandatory redemption, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the date fixed for redemption, from surplus funds at the earlier of the completion of the tax-exempt project or expiration of a certain period for construction financings, and upon an event of taxability.

The 2019 Bonds are subject to substantially similar asset sale offer and change of control offer provisions, affirmative and negative covenants, events of default and remedies as the Indenture governing the Notes.

As of the date hereof, all of the 2019 Bonds remain outstanding.

The foregoing description of the 2019 Bonds and the 2019 Bond Financing Agreement does not purport to be complete. The description of the 2019 Bond Financing Agreement provisions is qualified in its entirety by the copy of the 2019 Bond Financing Agreement and related Definitions Annex filed herewith as Exhibit 10.3.1 and Exhibit 10.3.2, respectively.

Item 7.01. Regulation FD Disclosure.

On January 15, 2021, the Corporation issued a press release announcing the consummation of the Transaction. A copy of the press release is furnished as Exhibit 99.1 hereto and is incorporated by reference herein.

In accordance with General Instruction B.2 of Form 8-K, the information contained in this Item 7.01 and the press release are being furnished under Item 7.01 of Form 8-K and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall such information and exhibits be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01. Financial Statements and Exhibits.

9.01(d) Exhibits:

Exhibit Number	**Description**
4.1	Indenture, dated as of September 18, 2020, by and among Big River Steel LLC, as issuer, BRS Finance Corp., as co-issuer, BRS Intermediate Holdings LLC, as parent guarantor, each guarantor that may become party thereto and U.S. Bank National Association, as trustee and collateral agent.
10.1	First Amended and Restated ABL Credit Agreement, dated as of September 10, 2020, by and among Big River Steel LLC, BRS Intermediate Holdings LLC, Goldman Sachs Bank USA, as administrative agent and collateral agent, and each lender party thereto.
10.2.1	Bond Financing Agreement, dated as of September 10, 2020, between Arkansas Development Finance Authority and each of Big River Steel LLC, BRS Finance Corp. and BRS Intermediate Holdings LLC relating to $265 million Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds).
10.2.2	Definitions Annex relating to Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds).
10.3.1	Bond Financing Agreement, dated as of May 31, 2019, between Arkansas Development Finance Authority and each of Big River Steel LLC, BRS Finance Corp. and BRS Intermediate Holdings LLC relating to $487 million Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Series 2019.
10.3.2	Definitions Annex relating to Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Series 2019.
99.1	Press release dated January 15, 2021.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

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.

UNITED STATES STEEL CORPORATION

By: /s/ Manpreet S. Grewal
Name: Manpreet S. Grewal
Title: Vice President & Controller

Dated: January 19, 2021

Exhibit 4.1

Execution Version

INDENTURE

Dated as of September 18, 2020

Among

BIG RIVER STEEL LLC,

as Issuer,

BRS FINANCE CORP.,

as Co-Issuer,

BRS INTERMEDIATE HOLDINGS LLC,

as Parent Guarantor,

EACH GUARANTOR THAT MAY BECOME PARTY HERETO,

And

U.S. BANK NATIONAL ASSOCIATION,

as Trustee and as Collateral Agent

6.625% SENIOR SECURED NOTES DUE 2029 (GREEN BONDS)

CONTENTS

INDENTURE, dated as of September 18, 2020, among Big River Steel LLC, a Delaware limited liability company (the "Issuer"), BRS Finance Corp., a Delaware corporation (the "Co-Issuer"), BRS Intermediate Holdings LLC, a Delaware limited liability company ("Parent"), any other Guarantors (as defined herein) that may become a party hereto from time to time, and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

Each of the parties agrees as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined herein) of the 6.625% Senior Secured Notes due 2029 (Green Bonds) (the "Notes").

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

"144A Global Note" means a Global Note substantially in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"2019 Bond Financing Agreement" means that certain Bond Financing Agreement dated as of May 31, 2019, by and between the Bond Issuer, the Issuer, the Co-Issuer and Parent.

"2019 Bond Indenture" means that certain Trust Indenture dated as of May 31, 2019, by and between the Bond Issuer and the trustee for the 2019 Bonds.

"2019 Bonds" means the bonds designated as the "Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Series 2019" and any additional bonds issued pursuant to the 2019 Bond Indenture.

"2020 Bond Financing Agreement" means that certain Bond Financing Agreement dated as of September 10, 2020, by and between the Bond Issuer, the Issuer, the Co-Issuer and Parent.

"2020 Bond Indenture" means that certain Trust Indenture dated as of September 10, 2020, by and between the Bond Issuer and the trustee of the 2020 Bonds.

"2020 Bonds" means the bonds designated as the "Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds)" and any additional bonds issued pursuant to the 2020 Bond Indenture.

"ABL Agent" means Goldman Sachs Bank USA and any successors thereof under the ABL Facility, acting as administrative agents on behalf of the lenders under the ABL Facility.

"ABL Cap Amount" has the meaning specified in the definition of "ABL Obligations".

"ABL Claimholders" means, at any relevant time, the holders of ABL Obligations and/or the Excess ABL Obligations at that time, including the ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent under the loan documents for the ABL Facility, the ABL Hedge Provider and the ABL Cash Management Provider (as each such term is defined in the Intercreditor Agreement), and the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, any former ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent, ABL Hedge Provider and ABL Cash Management Provider to the extent that any Obligations owing to such Persons were incurred while such Persons were ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent, ABL Hedge Provider or ABL Cash Management Provider, as applicable, and such Obligations have not been paid or satisfied in full.

"ABL Facility" means (i) the Credit Agreement, dated as of August 23, 2017, among the Issuer, any Restricted Subsidiary of the Issuer designated as a "Borrower" or "Credit Party" thereunder, the lenders party thereto, Goldman Sachs Bank USA (or an affiliate thereof) as administrative agent, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original agents, lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness thereunder or under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof, and (ii) whether or not the facility referred to in clause (i) remains outstanding, if designated in an Officer's Certificate delivered to the Trustee as "ABL Facility" until such time as the Issuer subsequently delivers an Officer's Certificate to the Trustee to the effect that such facility will no longer constitute "ABL Facility", including one or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances), or (C) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

"ABL Facility Lenders" means the lenders or holders of Indebtedness under the ABL Facility.

"ABL Obligations" means, subject to clause (5) hereof, the following:

(1) the "Obligations" (as defined in the ABL Facility);

(2) all ABL Hedging Obligations (as defined in the Intercreditor Agreement);

(3) all ABL Cash Management Obligations (as defined in the Intercreditor Agreement);

(4) to the extent any payment with respect to any ABL Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any Fixed Asset Pari Passu Lien Claimholders, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of the Intercreditor Agreement and the rights and obligations of the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to be reinstated and outstanding as if such payment had not occurred. To the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the loan documents for the ABL Facility are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "ABL Obligations"; and

(5) notwithstanding the foregoing, if the sum of: (1) Indebtedness for borrowed money constituting principal outstanding under the ABL Facility and the other loan documents for the ABL Facility; plus (2) the aggregate face amount of any letters of credit issued but not reimbursed under the ABL Facility, is in excess of $500,000,000 in the aggregate (the "ABL Cap Amount"), then only that portion of such Indebtedness and such aggregate face amount of letters of credit equal to the ABL Cap Amount shall be included in ABL Obligations and interest and reimbursement obligations with respect to such Indebtedness and letters of credit shall only constitute ABL Obligations to the extent related to Indebtedness and face amounts of letters of credit included in the ABL Obligations.

"ABL Priority Collateral" means the following of any Grantor: (i) Accounts and chattel paper, in each case other than to the extent constituting identifiable proceeds of Notes Priority Collateral; (ii) deposit accounts, securities accounts and commodity accounts (and all cash, checks and other negotiable instruments, funds, securities, commodity contracts and other evidences of payment or other assets held therein) (but, in any event, excluding the Revenue Account (which will be used, among other things, for deposit of identifiable proceeds of Notes Priority Collateral), other Fixed Asset Accounts and the Fixed Asset Collateral Proceeds Account); (iii) all Inventory; (iv) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all documents, general intangibles, instruments, commercial tort claims, letters of credit, letter-of-credit rights and supporting obligations; provided, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any Notes Priority Collateral only that portion that evidences, governs, secures or reasonably relates to ABL Priority Collateral shall constitute ABL Priority Collateral; provided, further, that the foregoing shall not include any intellectual property; (v) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); (vi) insurance and claims against third parties to the extent arising on account of ABL Priority Collateral and all of the proceeds of and payments under all policies of business interruption insurance; and (vii) all proceeds and products of any or all of the foregoing in whatever form received, but excluding any property that is directly acquired prior to the commencement of any case or proceeding under the Bankruptcy Code or any similar Bankruptcy Law with cash proceeds of any ABL Priority Collateral and does not otherwise constitute ABL Priority Collateral upon its acquisition. Subject to certain provisions of the Intercreditor Agreement, upon a Discharge of Fixed Asset Pari Passu Lien Obligations, all Notes Priority Collateral shall become ABL Priority Collateral.

"Accounts" means all present and future "accounts" (as defined in Article 9 of the UCC), whether or not the UCC is applicable thereto, and shall include all rights of payment owed by an issuer of credit or charge card.

"Acquired Indebtedness" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into, or became a Restricted Subsidiary of, such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

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

"Act" means the Arkansas Development Finance Authority Act, Title 15, Chapter 5,Subchapters 1 through 3 of the Arkansas Code of 1987 Annotated, as amended.

"Act 9 Bond Documents" means (a) the Act 9 Trust Indenture, (b) the Act 9 Lease Agreement, and (c) that certain Payment in Lieu of Taxes Agreement dated as of April 30, 2015, between the City of Osceola and the Issuer, and all other documents executed in connection therewith, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Act 9 Bonds" means the bonds issued to Big River Steel Holdings LLC and assigned to Parent under the Act 9 Trust Indenture pursuant to Amendment 65 to the Constitution of State of Arkansas and Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, codified as Ark. Code Ann. Sections 14,164-201 *et seq*. as amended.

"Act 9 Lease Agreement" means that certain Lease Agreement dated as of April 30, 2015, between the City of Osceola and the Issuer, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Act 9 Trust Indenture" means that certain Trust Indenture dated as of April 30, 2015, between the City of Osceola, as issuer, and Regions Bank, as trustee for Parent as the owner of the Act 9 Bonds issued thereunder, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Act of Required Pari Passu Lien Secured Parties" means, as to any matter,

(1) from and after August 23, 2017, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the required lenders under the Term Loan Credit Agreement (and from and after the date of a Replacement Credit Agreement (if any), the required lenders under a Replacement Credit Agreement) until the earliest of (x) the Discharge of Credit Agreement Obligations, (y) the Outstanding Term Loan Threshold Date and (z) the First Specified Pari Passu Lien Debt Threshold Date (the date on which the earliest of the foregoing clauses (1)(x), (1)(y) and (1)(z) occurs, the "First Controlling Change Date");

(2) from and after the First Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the Required Delayed Draw Term Lenders until the earlier of (x) the Discharge of Specified Pari Passu Lien Debt Obligations and (y) the Second Specified Pari Passu Lien Debt Threshold Date (the date on which the earlier of the foregoing clauses (2)(x) and (2)(y) occurs, the "Second Controlling Change Date"); and

(3) from and after the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the holders of (or the Pari Passu Lien Debt Representatives representing the holders of) more than 50% of the aggregate outstanding principal amount of Pari Passu Lien Debt;

provided, however, that if at any time prior to the Discharge of Pari Passu Lien Obligations the only remaining Pari Passu Lien Obligations are Secured Hedging Obligations, then the term "Act of Required Pari Passu Lien Secured Parties" will mean a direction in writing delivered by the Hedge Bank with the largest amount of Secured Hedging Obligations owed to it. For purposes of this definition, (a) Pari Passu Lien Debt registered in the name of, or beneficially owned by, the Issuer or any Affiliate of the Issuer will be deemed not to be outstanding and neither the Issuer nor any Affiliate of the Issuer will be entitled to vote such Pari Passu Lien Debt and (b) votes will be determined in accordance with the Collateral Trust Agreement.

"Additional Pari Passu Lien Debt" has the meaning specified in clause (1) of the definition of "Additional Pari Passu Lien Debt Designation".

"Additional Pari Passu Lien Debt Designation" means a designation under the Collateral Trust Agreement pursuant to which the Issuer designates as Pari Passu Lien Debt hereunder any Funded Debt incurred by any Issuer or any Subsidiary Guarantor after August 23, 2017 in accordance with the terms of all applicable Pari Passu Lien Debt Documents that states that:

(1) the Issuer or such other Grantor intends to incur additional Pari Passu Lien Debt ("Additional Pari Passu Lien Debt") which will be Pari Passu Lien Debt not prohibited by any Pari Passu Lien Debt Document to be incurred and secured by a Pari Passu Lien equally and ratably with all previously existing and future Pari Passu Lien Debt;

(2) specifies the name and address of the Pari Passu Lien Debt Representative for such Additional Pari Passu Lien Debt for purposes of the Collateral Trust Agreement;

(3) states that the Issuer and each other Grantor has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant filings and recordations to ensure that the Additional Pari Passu Lien Debt is secured by the Collateral in accordance with the Pari Passu Lien Security Documents;

(4) attaches a reaffirmation agreement contemplated by the Collateral Trust Agreement, which has been duly executed by the Issuer and each other Grantor; and

(5) states that the Issuer has caused a copy of the Additional Pari Passu Lien Debt Designation and the related Collateral Trust Joinder (if any) to be delivered to each then existing Pari Passu Lien Debt Representative.

"Additional Notes" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Sections 2.02 and 4.09 hereof, as part of the same series as the Initial Notes.

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

"Agent" means any Registrar, co-registrar, Transfer Agent or paying agent.

"After-Acquired Property" means (i) equipment or fixtures acquired by any Issuer or any other Grantor after August 23, 2017 which constitute accretions, additions or technological upgrades to the equipment or fixtures that form part of the Notes Priority Collateral, (ii) any equipment, fixtures and real estate of any Issuer or any other Grantor acquired after the Issue Date, (iii) all of the Capital Stock acquired after August 23, 2017 and held by any Issuer or any other Grantor (other than any Capital Stock that is an Excluded Asset), (iv) substantially all of the other tangible and intangible assets of the Issuer and each Grantor acquired after the Issue Date and (v) any asset or other property, whether personal, real or other, that was designated as an "Excluded Asset," which asset or other property ceases to constitute an Excluded Asset.

"Applicable Indebtedness" has the meaning assigned to it in the definition of "Weighted Average Life to Maturity."

"Applicable Premium" means, with respect to any Note on any Redemption Date, the greater of:

(1) 1.00% of the principal amount of such Note; and

(2) the excess, if any, of:

(a) the present value at such Redemption Date of (i) the redemption price of such Note at September 15, 2023 (as set forth in the table appearing in Section 3.07)(f), *plus* (ii) all required remaining scheduled interest payments due on such Note through September 15, 2023 (excluding accrued but unpaid interest to, but excluding, the Redemption Date), computed using a discount rate equal to the Treasury Rate as of such Redemption Date *plus* 50 basis points; over

(b) the then outstanding principal amount of such Note on such Redemption Date,

as calculated by the Issuer or on behalf of the Issuer by such Person as the Issuer will designate; *provided* that such calculation will not be the duty or obligation of the Trustee.

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

"Asset Sale" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction, other than a Specified Sale and Lease-Back Transaction) of the Issuer or any Restricted Subsidiary (each referred to in this definition as a "disposition"); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 4.09) of any Restricted Subsidiary (other than to the Issuer or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course, (iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Issuer), (iv) dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business and (v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Issuer and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the disposition of all or substantially all of the assets of the Issuer or a Restricted Subsidiary in a manner permitted pursuant to the provisions described in Section 5.01 (other than under Section 5.01(b)(2)) or any disposition that constitutes a Change of Control pursuant to this Indenture;

(c) any disposition in connection with the making of any Restricted Payment that is permitted to be made, and is made, under Section 4.07 or any Permitted Investment or any acquisition otherwise permitted by this Indenture;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value for any individual transaction or series of related transactions of less than the greater of $30.0 million and 10.0% of Consolidated EBITDA of the Issuer for the most recently ended Test Period (calculated on a *pro forma* basis) determined at the time of the making of such disposition;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Issuer or by the Issuer or a Restricted Subsidiary to a Restricted Subsidiary (and in the event such disposition of property or assets or issuance of securities was made by the Issuer or a Guarantor, such disposition of property or assets or issuance of securities is made to a Guarantor);

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

(g) (i) the lease or sub-lease, assignment, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice, (ii) the lease or sub-lease, assignment, license or sublicense of, or co-location arrangement relating to, any real or other property of the Issuer and its Restricted Subsidiaries for the purpose of facilitating the use by other Persons of such real or other property in connection with the conduct by such other Persons (or their affiliates) of a Similar Business and, in connection with which, the Issuer or a Restricted Subsidiary or a Parent Company enters into a contract or arrangement with such other Person for the sale or acquisition of products or services, and (iii) the exercise of termination rights with respect to any lease, sub-lease, assignment, license or sublicense or other agreement or arrangement;

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

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including, for the avoidance of doubt, any casualty event) with respect to assets or the granting of Liens not prohibited by this Indenture;

(j) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility, sales of receivables in connection with Receivables Financing Transactions or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;

(k) any financing transaction with respect to property built or acquired by the Issuer or any Restricted Subsidiary after August 23, 2017, including asset securitizations permitted by this Indenture;

(l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof;

(m) the licensing or sub-licensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which in the reasonable good faith determination of the Issuer are not material to the conduct of the business of the Issuer and its Restricted Subsidiaries taken as a whole;

(r) the granting of a Lien that is permitted under Section 4.12;

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable law;

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

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of the same or similar replacement property;

(v) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction; and

(w) dispositions of property in connection with any Specified Sale and Lease-Back Transaction.

"ASU" has the meaning assigned to it in the definition of "Capitalized Lease Obligation."

"Attributable Indebtedness" means, on any date, in respect of any Capitalized Lease Obligation or Sale and Lease-Back Transaction of any Person, (i) in the case of a Capitalized Lease Obligation or a Sale and Lease-Back Transaction that constitutes a Capitalized Lease Obligation, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP or (ii) in the case of a Sale and Lease-Back Transaction that does not constitute a Capitalized Lease Obligation, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Lease-Back Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended determined in accordance with GAAP.

"Bankruptcy Code" means Title 11 of the United States Code.

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors, including for greater certainty, any such law in respect of corporation arrangement, reorganization or scheme, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, winding-up, or arrangement (including corporate statutes).

"Board of Directors" means, for any Person, the board of directors, board of managers, or other governing body of such Person or, if such Person does not have such a board of directors, board of managers or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors.

"Bond Issuer" means the Arkansas Development Finance Authority, a public body corporate and politic created and existing under the Act together with its successors and assigns.

"Broker-Dealer Regulated Subsidiary" means any Subsidiary of the Issuer that is registered as a broker-dealer under the Exchange Act or any other applicable laws requiring such registration.

"Business Day" means any day that is not a Legal Holiday.

"Capex Equity" means Capital Stock of the Issuer issued to Parent, the Net Cash Proceeds from the issuance of which, and other cash equity capital contributions by Parent to the Issuer, the Net Cash Proceeds of which, are used for purposes of Expansion Capital Expenditures.

"Capital Expenditures" means all expenditures made by the Issuer, a Subsidiary Guarantor or a Restricted Subsidiary, as applicable, for the acquisition, leasing (pursuant to a capital lease of fixed or capital assets), construction, development or improvement of assets or additions to equipment (including replacement, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of the Issuer and its Restricted Subsidiaries.

"Capital Markets Indebtedness" means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (a) a public offering registered under the Securities Act, (b) a private placement to institutional investors that is resold in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC or (c) a private placement to institutional investors. For the avoidance of doubt, the term "Capital Markets Indebtedness" does not include any Indebtedness under commercial bank facilities, Indebtedness incurred in connection with a Sale and Lease-Back Transaction, Indebtedness incurred in the ordinary course of business of the Issuer, Capitalized Lease Obligations or recourse transfer of any financial asset or any other type of Indebtedness incurred in a manner not customarily viewed as a "securities offering" but does include the obligations of the Issuer pursuant to the 2020 Bond
Financing Agreement and the 2019 Bond Financing Agreement.

"Capital Stock" means:

(1) in the case of a corporation, corporate stock or shares in the capital of such corporation;

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

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

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person;

but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Capitalized Lease Obligation" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP; *provided* that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "ASU") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Indenture (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 4.03.

"Capitalized Software Expenditures" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

"Captive Insurance Subsidiary" means any Subsidiary of the Issuer that is subject to regulation as an insurance company (or any Subsidiary thereof).

"Cash Equivalents" means:

(1) United States dollars;

(2) (a) Euros, Yen, Canadian Dollars, Pounds Sterling or any national currency of any participating member state of the EMU; or

(b) in the case of any Foreign Subsidiary or any jurisdiction in which the Issuer or its Restricted Subsidiaries conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the United States dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Issuer) and, in each case, maturing within 36 months after the date of acquisition;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Issuer);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case, having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Issuer) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Issuer) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Issuer);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above; *provided* that such amounts, except amounts used to pay non-dollar denominated obligations of the Issuer or any Restricted Subsidiary in the ordinary course of business, are converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"Cash Management Agreement" means any agreement entered into from time to time by the Issuer or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"Cash Management Obligations" means Obligations in connection with, or in respect of,Cash Management Services.

"Cash Management Services" means (a) commercial credit cards, employee credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft protections, automatic clearing house arrangements and fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services, (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements and (e) any other related services or activities.

"CFC" means a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"CFC Holdco" means a Domestic Subsidiary substantially all of whose assets consists (directly or indirectly through disregarded entities) of the Capital Stock or indebtedness (in the case of indebtedness, to the extent such indebtedness is treated as equity for U.S. federal income tax purposes) of one or more Subsidiaries that are CFCs.

"Change of Control" means the occurrence of any of the following after the Issue Date:

(1) the sale, lease, transfer, conveyance or other disposition in one or a series of related transactions (other than by merger, consolidation, amalgamation or business combination) of all or substantially all of the assets of Parent or the Issuer and its Subsidiaries, in each case, taken as a whole, to any Person other than one or more Permitted Holders;

(2) the Issuer becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of Equity Interests of the Issuer representing more than fifty percent (50.00%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Issuer (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Equity Interests held by any Permitted Holder will be excluded), unless the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of the Issuer; or

(3) the Issuer ceases to be directly wholly-owned by Parent.

"Clearstream" means Clearstream Banking, Société Anonyme and its successors.

"Co-Issuer" means BRS Finance Corp., a Delaware corporation and a Wholly-Owned Subsidiary of the Issuer, and its successors.

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

"Collateral" means all the assets and properties subject to the Liens created by the Security Documents.

"Collateral Trust Agreement" means the collateral trust agreement entered into on the Issue Date among the Issuers, certain other Grantors, the Collateral Agent, the Trustee as a Pari Passu Lien Debt Representative, the Term Loan Administrative Agent, the Commercial Building Lender and the Equipment Lessor, as hereafter amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Collateral Trust Joinder" means as to any Series of Pari Passu Lien Debt, the written agreement of a representative of holders of such Series of Pari Passu Lien Debt, as set forth in this Indenture, credit agreement or other agreement governing such Series of Pari Passu Lien Debt, whereby such Person agrees to become party as a Pari Passu Lien Debt Representative under the Collateral Trust Agreement and whereby such Person, on behalf of itself and each holder of Pari Passu Lien Obligations in respect of the Series of Pari Passu Lien Debt for which such Person is acting as Pari Passu Lien Debt Representative agrees, for the enforceable benefit of all holders of each current and future Series of Pari Passu Lien Debt, each current and future Pari Passu Lien Debt Representative, and each current and future Pari Passu Lien Secured Party and Pari Passu Lien Obligations and as a condition to being treated as Pari Passu Lien Debt under the Collateral Trust Agreement that:

(1) all Pari Passu Lien Obligations will be and are secured equally and ratably by all Pari Passu Liens at any time granted by the Issuer or any other Grantor to secure any Pari Passu Lien Obligations, whether or not upon property otherwise constituting collateral for such Pari Passu Lien Obligations, and that all such Pari Passu Liens will be enforceable by the Collateral Agent for the benefit of all Pari Passu Lien Secured Party equally and ratably; provided, however, that notwithstanding the foregoing, this provision will not be violated with respect to any particular Collateral and any particular Series of Pari Passu Lien Debt if the Pari Passu Lien Debt Documents in respect thereof prohibit the applicable Pari Passu Lien Debt Representative from accepting the benefit of a Pari Passu Lien on any particular asset or property or such Pari Passu Lien Debt Representative otherwise expressly declines in writing to accept the benefit of a Pari Passu Lien on such asset or property, provided that notwithstanding the foregoing, all amounts on deposit in the Specified Accounts or credited thereto shall be for the benefit of all Pari Passu Lien Secured Parties; *provided* that funds in the various debt service reserve accounts and the construction account shall be for the exclusive benefit of specified creditors until those creditors are paid in full, and otherwise the funds on deposit in the Specified Accounts shall be applied to the Pari Passu Lien Obligations in the order provided in, and otherwise in accordance with, the Collateral Trust Agreement and/or the Deposit Agreement, as applicable;

(2) such Person and each holder of Pari Passu Lien Obligations in respect of the Series of Pari Passu Lien Debt for which the undersigned is acting as Pari Passu Lien Debt Representative are bound by the provisions of the Collateral Trust Agreement, including the provisions relating to the ranking of Pari Passu Liens and the order of application of proceeds from the enforcement of Pari Passu Liens; and

(3) the Collateral Agent shall perform its obligations under the Collateral Trust Agreement and the other Pari Passu Lien Debt Documents.

"Commercial Building Lender" means First Security Bank, an Arkansas banking corporation.

"Commercial Building Lender Obligations" means all Obligations under the Commercial Building Loan Agreement, including with respect to the Commercial Building Loan.

"Commercial Building Loan" means the loan made by the Commercial Building Lender under the Commercial Building Loan Agreement.

"Commercial Building Loan Agreement" means that certain Loan Agreement, dated as of September 8, 2016, by and between the Issuer and the Commercial Building Lender, as the same has been amended, supplemented or otherwise modified prior to the Issue Date and as in effect on the Issue Date, and as may be further amended, supplemented or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"consolidated" means, with respect to any Person, such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

"Consolidated Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including, the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and the amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h), (l) and (m)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers' acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of "Consolidated Interest Expense" pursuant to the definition thereof; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise and similar taxes, and foreign withholding taxes paid or accrued during such period (including any other levies that replace or are intended to be in lieu of such taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of "Consolidated Net Income", and any payments to a Parent Company in respect of such taxes permitted to be made under this Indenture; *plus*

(c) Consolidated Depreciation and Amortization Expense for such period; *plus*

(d) any other non-cash charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (A) the Issuer may determine not to add back such non-cash charge in the current period and (B) to the extent the Issuer does decide to add back such non-cash charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Issue Date, in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation; plus*

(f) (i) the amount of board of director fees and any management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreements or otherwise to the extent permitted under Section 4.11 and (ii) the amount of payments made to optionholders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Companies, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted under this Indenture; *plus*

(g) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; *plus*

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); *plus*

(j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of *FASB Accounting Standards Codification Topic 715— Compensation—Retirement Benefits*, and any other items of a similar nature; *plus*

(k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period; *plus*

(l) the amount of "run rate" cost savings, synergies and operating expense reductions related to restructurings, cost savings initiatives or other initiatives that are projected by the Issuer in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Issuer) within 24 months after the end of such period (which cost savings, synergies or operating expense reductions shall be calculated on a pro forma basis as though such cost savings, synergies or operating expense reductions had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that "run rate" means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Issue Date) (which adjustments may be incremental to (but not duplicative of) any *pro forma* cost savings, synergies or operating expense reduction adjustments as are appropriate and consistent with the *pro forma* provisions set forth in the definition of Fixed Charge Coverage Ratio); *provided* that such cost savings, synergies and operating expenses are reasonably identifiable and factually supportable; *plus*

(m) any payments in the nature of compensation or expense reimbursement made to independent board members; *plus*

(n) internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; *plus*

(o) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of); *plus*

(p) pre-startup expenses; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition);

(b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period; and

(c) any income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of).

"Consolidated Interest Expense" means, with respect to any Person for any period, without duplication, the sum of:

(1) cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than Non-Recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof); *plus*

(2) non-cash interest expense resulting solely from (a) the amortization of original issue discount from the issuance of Indebtedness of such Person and its Restricted Subsidiaries at less than par (excluding the 2020 Bonds, the 2019 Bonds, the Notes and any Indebtedness borrowed under the ABL Facility in connection with the Transactions and any Non-Recourse Indebtedness), *plus* (b) pay-in-kind interest expense of such Person and its Restricted Subsidiaries payable pursuant to the terms of the agreements governing Indebtedness for borrowed money,

excluding, in each case, (i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (2)(a) and (2)(b) above (including as a result of the effects of acquisition method accounting or pushdown accounting), (ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815— *Derivatives and Hedging*, (iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates, (iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness, (v) "additional interest" owing pursuant to a registration rights agreement with respect to any securities, (vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions, (vii) penalties and interest relating to taxes, (viii) accretion or accrual of discounted liabilities not constituting Indebtedness, (ix) interest expense attributable to a Parent Company resulting from push-down accounting, (x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting, (xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential), with respect thereto in connection with any acquisition or Investment and (xii) annual agency fees paid to the administrative agents and collateral agents (including any security or collateral trust arrangements related thereto) under any Credit Facilities, including the ABL Facility, the 2020 Bonds, the 2019 Bonds and the Notes.

For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"Consolidated Net Income" means, for any period, the net income (loss) of the Issuer and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and intellectual property development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after August 23, 2017 (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost-savings initiatives; curtailments and modifications to pension and post-employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary, and, solely for the purpose of determining the amount available for Restricted Payments under Section 4.07(a)(3)(A), the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting (*provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period);

(6) solely for the purpose of determining the amount available for Restricted Payments under Section 4.07(a)(3)(A), the Net Income for such period of any Restricted Subsidiary (other than any Subsidiary Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Issuer reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration, or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation* or Accounting Standards Codification Topic 505-50, *Equity-Based Payments to Non-Employees*, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Notes, the 2020 Bonds, the 2019 Bonds and the syndication and incurrence of any Credit Facilities or Other Pari Passu Lien Obligations), issuance of Equity Interests (including by any direct or indirect parent of the Issuer), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Notes, the 2020 Bonds, the 2019 Bonds and other securities and any Credit Facilities or Other Pari Passu Lien Obligations) and including, in each case, any such transaction whether consummated on, after or prior to the Issue Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, *Business Combinations*);

(12) accruals and reserves that are established or adjusted in connection with an Investment or an acquisition that are required to be established or adjusted as a result of such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Indenture;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to *FASB Accounting Standards Codification Topic 815—Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to *FASB Accounting Standards Codification Topic 825—Financial Instruments*;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation;

(17) any non-cash rent expense;

(18) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(19) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Indenture.

Notwithstanding the foregoing, for the purpose of Section 4.07 only (other than Section 4.07(a)(3)(D)), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under Section 4.07(a)(3)(D).

"Consolidated Secured Debt" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Issuer and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien; *provided* that Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. dollar-equivalent principal amount of such Indebtedness.

"Consolidated Total Debt" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Issuer and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness; *provided* that Consolidated Total Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. dollar-equivalent principal amount of such Indebtedness.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds

(a) for the purchase or payment of any such primary obligation, or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"Controlled Investment Affiliate" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Issuer and/or other companies.

"Controlling Representative" means:

(1) from and after August 23, 2017 until the First Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Term Loan Administrative Agent (and from and after the date of a Replacement Credit Agreement, the agent or other representative thereunder);

(2) from and after the First Controlling Change Date until the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Specified Pari Passu Lien Debt Representative;

(3) from and after the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Pari Passu Lien Debt Representative that represents the Series of Pari Passu Lien Debt with the then largest outstanding principal amount; (which will be the Series of Pari Passu Lien Debt with the then largest outstanding principal amount which cast its votes pursuant to the Collateral Trust Agreement).

provided, however, that if at any time prior to the Discharge of Pari Passu Lien Obligations the only remaining Pari Passu Lien Obligations are Secured Hedging Obligations, then the term "Controlling Representative" will mean the Hedge Bank with the largest amount of Secured Hedging Obligations owed to it.

"Convertible Indebtedness" means Indebtedness of the Issuer (which may be guaranteed by the Guarantors) permitted to be incurred under the terms of this Indenture that is either (a) convertible into common stock of the Issuer (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of the Issuer and/or cash (in any amount determined by reference to the price of such common stock).

"Corporate Trust Office of the Trustee" shall be at the address of the Trustee specified in Section 13.02 hereof or such other address as to which the Trustee may give notice to the Holders and the Issuers.

"Credit Facilities" means, with respect to the Issuer or any Restricted Subsidiary, one or more debt facilities, including the ABL Facility or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, note issuances, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and other agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities that replace, refund, supplement, extend, renew, restate, amend, modify or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such exchange, replacement, refunding, supplemental, extended, renewed, restated, amended, modified or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof (*provided* that such increase in borrowings or issuances is permitted under Section 4.09) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or holders. Any agreement or instrument other than the ABL Facility must be designated in an Officer's Certificate delivered to the Trustee as a "Credit Facility" until such time as the Issuer subsequently delivers an Officer's Certificate to the Trustee to the effect that such facility will no longer constitute a "Credit Facility".

"Custodian" means the Trustee, as custodian with respect to the Notes, each in global form, or any successor entity thereto.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

"Definitive Note" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06(c) hereof, substantially in the form of Exhibit A hereto, except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"Deposit Agreement" means the Security Deposit Agreement, substantially in the form attached to the Collateral Trust Agreement as Exhibit E (with such changes as may be reasonably requested by the Depository Bank as are customary for its role as a depository thereunder), to be entered between the Issuer, the Collateral Agent, the ABL Agent, the Equipment Lessor and the Commercial Building Lender and the Depository Bank, governing the bank accounts established pursuant thereto, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the term thereof. As of the Issue Date, no Deposit Agreement is required under the Collateral Trust Agreement and no Deposit Agreement has been entered into pursuant thereto.

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

"Depository Bank" means U.S. Bank National Association, as both a "securities intermediary" and a "bank" under the Deposit Agreement.

"Direct Agreement" means any agreement required to be entered into under the Specified Pari Passu Lien Debt Documents by the Issuer or any other Grantor, a counterparty to any material contract of the Issuer or such Grantor and the Collateral Agent, that grants the consent of such material contract counterparty to the collateral assignment of the applicable material contract to the Collateral Agent.

"Designated Non-Cash Consideration" means the fair market value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration.

"Designated Preferred Stock" means Preferred Stock of the Issuer, any Restricted Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in Section 4.07(a)(3).

"Designated Revolving Commitments" means any commitments to make loans or extend credit on a revolving basis to the Issuer or any Restricted Subsidiary by any Person other than the Issuer or any Restricted Subsidiary that have been designated in an Officer's Certificate delivered to the Trustee as "Designated Revolving Commitments" until such time as the Issuer subsequently delivers an Officer's Certificate to the Trustee to the effect that such commitments will no longer constitute "Designated Revolving Commitments"; *provided* that during such time, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Fixed Charge Coverage Ratio, Total Net Leverage Ratio, Senior Secured Net Leverage Ratio and the availability of any baskets hereunder.

"Development" means the ownership, occupation, design, development, construction, system establishment, testing, start-up, commissioning, implementation, optimization, repair, operation, maintenance and use of the Phase II Project through final completion of the Phase II Project as determined by the Board of Directors.

"Discharge of Credit Agreement Obligations" means that the Pari Passu Lien Obligations pursuant to the Term Loan Credit Agreement (other than Secured Hedging Obligations and any contingent indemnification obligations not then due) are no longer secured by, and are no longer required to be secured by, the Collateral pursuant to the terms of the Term Loan Credit Agreement and the other Loan Documents (as defined in the Term Loan Credit Agreement); provided that a Discharge of Credit Agreement Obligations shall be deemed not to have occurred if a Replacement Credit Agreement is entered into.

"Discharge of Fixed Asset Pari Passu Lien Obligations" means, except to the extent otherwise expressly provided in the Intercreditor Agreement, the occurrence of each of the following clauses (a) through (c): (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Fixed Asset Pari Passu Lien Debt Documents; (b) (i) payment in full in cash of all the Secured Hedging Obligations (other than contingent indemnification obligations not then due) and the expiration or termination of all outstanding transactions under the Hedge Agreements or (ii) the cash collateralization of all such Hedging Obligations on terms satisfactory to each applicable Hedge Bank (or other arrangements satisfactory to each such Hedge Bank shall have been made); and (c) termination or expiration of all commitments, if any, to extend credit that would constitute Fixed Asset Pari Passu Lien Obligations.

"Discharge of Pari Passu Lien Obligations" means the occurrence of all of the following:

(1) termination or expiration of all commitments to extend credit that would constitute Pari Passu Lien Debt;

(2) with respect to each Series of Pari Passu Lien Debt, either (x) payment in full in cash of the principal of and interest and premium (if any) on all Pari Passu Lien Debt of such Series or (y) there has been a legal defeasance or covenant defeasance pursuant to the terms of the applicable Pari Passu Lien Documents for such Series of Pari Passu Lien Debt;

(3) payment in full in cash of all other Pari Passu Lien Obligations that are outstanding and unpaid at the time the Pari Passu Lien Debt is paid in full in cash; and

(4) (i) payment in full in cash of all Secured Hedging Obligations and the expiration or termination of all outstanding transactions under the Hedge Agreements or (ii) the cash collateralization of all such Secured Hedging Obligations on terms satisfactory to each applicable Hedge Bank (or other arrangements satisfactory to each such Hedge Bank shall have been made).

"Discharge of Specified Pari Passu Lien Debt Obligations" means that the Pari Passu Lien Obligations pursuant to the Specified Pari Passu Lien Debt Documents (other than any contingent indemnification obligations not then due) are no longer secured by, and no longer required to be secured by, the Collateral pursuant to the terms of the Specified Pari Passu Lien Debt Documents.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for any Qualified Equity Interests or solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Notes or the date the Notes are no longer outstanding; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability; *provided*, *further,* that any Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer, any of its Subsidiaries, any Parent Company, or any other entity in which the Issuer or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt or Consolidated Secured Debt, as applicable, will be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Issuer.

"Domestic Subsidiary" means any direct or indirect Subsidiary of the Issuer that is organized or existing under the laws of the United States, any state thereof or the District of Columbia.

"EMU" means the economic and monetary union as contemplated in the Treaty on European Union.

"Equipment Lease" means each of (i) Equipment Schedule No. 1, dated September 8, 2016, between the Equipment Lessor and the Issuer and (ii) Equipment Schedule No. 2, dated December 16, 2016, between the Equipment Lessor and the Issuer, in each case incorporating the terms of that certain Master Sub-sublease Agreement, dated as of September 8, 2016, as the same has been amended, supplemented, assigned or otherwise modified prior to August 23, 2017 and as in effect on such date and as may be further amended, supplemented, assigned or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"Equipment Lease Advance" means the sub-lease financings made by the Equipment Lessor under the Equipment Lease.

"Equipment Lease Documents" means the Equipment Lease, the Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement from the Issuer, as mortgagor, to the Equipment Lessor, as mortgagee, with the effective date of September 8, 2016, the Amended and Restated Recognition of Leasehold and Security Interest, Nondisturbance and Attornment Agreement made November 17, 2016 among the Issuer, the City of Osceola, Arkansas, the Equipment Lessor and the Commercial Building Lender, the Option Agreement, dated September 8, 2016, between the Issuer and the Equipment Lessor, the Amended and Restated Easement Agreement, dated as of December 16, 2016, among City of Osceola, as grantor, the Issuer and the Equipment Lessor, the Amended and Restated Environmental Indemnity Agreement, dated as of December 16, 2016, by the Issuer, BRS Intermediate Holdings LLC and the Equipment Lessor, the Continuing Guaranty, dated as of September 8, 2016, made by BRS Intermediate Holdings LLC in favor of the Equipment Lessor, the Guaranty Affirmation Letter delivered by BRS Intermediate Holdings LLC to the Equipment Lessor on December 16, 2016, and each of the other agreements, documents and instruments providing for or evidencing any Equipment Lease Obligation, and any other document or instrument executed or delivered at any time in connection with any Equipment Lease Obligations, in each case as the same has been amended, supplemented, assigned or otherwise modified prior to the Issue Date and as in effect on the Issue Date and as may be further amended, supplemented, assigned or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"Equipment Lease Obligations" means all Rent (as defined in the Equipment Lease Documents), fees, deposits, payments of stipulated loss value, late charges, reimbursement obligations and other amounts owing in connection with the Equipment Lease Advances issued under the Equipment Lease Documents.

"Equipment Lessor" means SCF, as sub-sublessor under the Equipment Lease and servicer on behalf of other Persons.

"Equity Interests" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"Equity Offering" means any public or private sale of common equity or Preferred Stock of the Issuer or any Parent Company (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Issuer's or any Parent Company's common equity registered on Form S-4 or Form S-8;

(2) issuances to any Restricted Subsidiary of the Issuer; and

(3) any such public or private sale that constitutes an Excluded Contribution or Capex Equity.

"Escrowed Proceeds" means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "Escrowed Proceeds" shall include any interest earned on the amounts held in escrow.

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear system, and its successors.

"Euros" means the single currency of participating member states of the EMU.

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

"Excluded Account" means any deposit or securities account now or hereafter owned by any Issuer or any other Grantor that is used solely by such Issuer or such Guarantor (a) as a payroll account so long as such payroll account is a zero balance account, (b) as a petty cash account so long as the aggregate amount on deposit in all petty cash accounts of all Issuers and all Guarantors does not exceed $50,000 at any one time for all such deposit accounts combined, (c) to hold amounts required to be paid in connection with workers compensation claims, unemployment insurance, social security benefits and other similar forms of governmental insurance benefits, (d) to hold amounts which are required to be pledged or otherwise provided as security as required by law or pension requirement, (e) to hold cash and cash equivalents pledged to secure Obligations under the ABL Facility consisting of reimbursement obligations in respect of letters of credit and swing line loans (and/or any obligations of lenders participating in the facilities under which such letters of credit are issued and swing line loans made) without granting a Lien thereon to secure any other Obligations under the ABL Facility or Lenders Debt or any Pari Passu Lien Obligations, (f) to hold cash and cash equivalents pledged to the Equipment Lessor to secure Equipment Lease Obligations so long as the aggregate amount of cash and cash equivalents so pledged and on deposit in or credited to all such accounts does not exceed $6,672,335 at any one time or (g) as a withholding tax or fiduciary account.

"Excluded Assets" means the collective reference to:

(1) any lease, license, contract or agreement to which any Issuer or any other Grantor is a party, and any of its rights or interest thereunder, if and to the extent that a security interest is prohibited by or in violation of (i) any law, rule or regulation applicable to such Issuer or such Guarantor, or (ii) a term, provision or condition of any such lease, license, contract or agreement (unless such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); *provided* that the Excluded Assets shall not include (and security interest under the Security Documents shall attach) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in subclauses (i) or (ii) above; *provided further* that the exclusions referred to in this clause (1) of this definition shall not include any Proceeds (as defined in the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction) of any such lease, license, contract or agreement;

(2) any portion of Capital Stock that is voting Capital Stock of any Foreign Subsidiary or CFC Holdco to the extent such portion of Capital Stock represents voting power in excess of 65% of the total combined voting power of all classes of voting stock (within the meaning of Treasury Regulations section 1.956-2(c)(2)) of such Foreign Subsidiary or CFC Holdco;

(3) any "intent-to-use" application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(4) any equity interests in, and the assets and properties of, an Excluded Subsidiary; or

(5) Excluded Accounts.

"Excluded Capital Expenditures" means any Capital Expenditure (whether or not required) made solely for maintenance, replacement or environmental, human health or safety or other regulatory purposes and not in connection with the incurrence of Expansion Capital Expenditures.

"Excluded Contribution" means net cash proceeds, the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Issuer from:

(1) contributions to its common equity capital;

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

(3) the sale (other than to a Restricted Subsidiary of the Issuer or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer; in each case, designated as Excluded Contributions pursuant to an Officer's Certificate or that are excluded from the calculation set forth in Section 4.07(a)(3).

"Excluded Subsidiary" means (1) any Subsidiary that is not a Wholly-Owned Subsidiary of the Issuer or a Subsidiary Guarantor, (2) any Foreign Subsidiary, (3) any CFC Holdco, (4) any Domestic Subsidiary that is a direct or indirect Subsidiary of any CFC, (5) any Subsidiary, including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions, that is prohibited or restricted by applicable law or by contractual obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Issue Date (or, with respect to any Subsidiary acquired by the Issuer or a Restricted Subsidiary after the Issue Date (and so long as such contractual obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guarantee (including any Broker-Dealer Regulated Subsidiary), or if such Guarantee would require governmental (including regulatory) or third party (other than the Issuer, Co-Issuer or any Guarantor or their respective Subsidiaries) consent, approval, license or authorization, (6) any special purpose vehicle (or similar entity) or any Securitization Subsidiary, (7) any Captive Insurance Subsidiary, (8) any not-for-profit Subsidiary, (9) any Subsidiary that is not a Significant Subsidiary, (10) any other Subsidiary with respect to which, in the reasonable judgment of the Issuer, the burden or cost (including any material adverse tax consequences) of providing the Guarantee will outweigh the benefits to be obtained by the Holders therefrom and (11) each Unrestricted Subsidiary; *provided* that any such Subsidiary that is an Excluded Subsidiary pursuant to clause (9) or (10) above will cease to be an Excluded Subsidiary at any time such Subsidiary guarantees Indebtedness under the ABL Facility or Capital Markets Indebtedness of the Issuer or the Co-Issuer or any other Subsidiary Guarantor.

"Expansion Capital Expenditures" means (i) any Capital Expenditures carried out for the purpose of increasing the earnings capacity of the Issuer or a Subsidiary Guarantor or (ii) any Investment in a Restricted Subsidiary made pursuant to clause (26) of the definition of "Permitted Investments;" *provided* that that Expansion Capital Expenditures shall include any Phase II Project Costs whether or not such Phase II Project Costs are considered capital expenditures in accordance with GAAP. Excluded Capital Expenditures shall be deemed not to be Expansion Capital Expenditures.

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

"Financial Officer" means the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of the Issuer, as appropriate.

"First Specified Pari Passu Lien Debt Threshold Date" means the date on which the sum of (1) the outstanding principal amount of the term loans under the Specified Pari Passu Lien Debt Documents (as long as the amount of funded term loans is not less than 25% of the aggregate term loan commitments thereunder on the Initial Funding Date (but in no event unless and until the amount of funded term loans exceeds $275.0 million) *plus* (2) from and after the occurrence of the Initial Funding Date, the aggregate term loan commitments subject to the Specified Commitment Condition under the Specified Pari Passu Lien Debt Documents exceeds (1) 50% of the aggregate outstanding principal amount of all Pari Passu Lien Debt or (2) the aggregate outstanding principal amount of the largest Series of Pari Passu Lien Debt (other than, for purposes of this clause (2), such loans and such commitments under the Specified Pari Passu Lien Debt Documents).

"Fixed Asset Accounts" has the meaning ascribed to the term "Accounts" in the Deposit Agreement.

"Fixed Asset Collateral Proceeds Account" means a deposit or securities account which will be used solely for deposit of identifiable proceeds of Notes Priority Collateral prior to the date the Deposit Agreement becomes effective.

"Fixed Asset General Intangibles" means all general intangibles (including intellectual property) which are not ABL Priority Collateral.

"Fixed Asset Mortgages" means a collective reference to each mortgage, deed of trust and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Fixed Asset Pari Passu Lien Obligations or under which rights or remedies with respect to any such Liens are governed.

"Fixed Asset Pari Passu Lien Claimholders" means, at any relevant time, the holders of Fixed Asset Pari Passu Lien Obligations at that time, including the Holders, the Trustee, any other Pari Passu Lien Debt Representative (as defined in the Collateral Trust Agreement) and other Pari Passu Lien Secured Parties and the Collateral Agent, and the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, any former Collateral Agent, Holder, Trustee and other Pari Passu Lien Debt Representative and Pari Passu Lien Secured Parties to the extent that any Obligations owing to such Persons were incurred while such Persons were Collateral Agent, Holder, Trustee, Pari Passu Lien Debt Representative or Pari Passu Lien Secured Parties, as applicable, and such Obligations have not been paid or satisfied in full.

"Fixed Asset Pari Passu Lien Collateral Documents" means the Collateral Trust Agreement, the "Security Documents" (as defined in this Indenture), and any other agreement, document or instrument pursuant to which a Lien is granted securing any Fixed Asset Pari Passu Lien Obligations or under which rights or remedies with respect to such Liens are governed (other than the Intercreditor Agreement).

"Fixed Asset Pari Passu Lien Obligations" means:

(1) all Obligations under this Indenture, the Notes, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement, the Specified Pari Passu Lien Debt Documents and other Obligations in respect of Pari Passu Lien Debt;

(2) all Secured Hedging Obligations; and

(3) to the extent any payment with respect to any Fixed Asset Pari Passu Lien Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any ABL Claimholders, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of the Intercreditor Agreement and the rights and obligations of the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to be reinstated and outstanding as if such payment had not occurred. To the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the Fixed Asset Pari Passu Lien Debt Documents are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "Fixed Asset Pari Passu Lien Obligations".

For purposes of this Indenture, and for the avoidance of doubt, "Fixed Asset Pari Passu Lien Obligations" includes (i) Obligations of the Issuer and the other Grantors under this Indenture or any of the Security Documents, (ii) Secured Hedging Obligations, and (iii) any Other Pari Passu Lien Obligations.

"Fixed Charge Coverage Ratio" means, with respect to any Test Period, the ratio of (1) Consolidated EBITDA of the Issuer for such Test Period to (2) the Fixed Charges of the Issuer and its Restricted Subsidiaries for such Test Period. In the event that the Issuer or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock or establishes or eliminates any Designated Revolving Commitments, in each case, subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Fixed Charge Coverage Ratio Calculation Date"), then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the most recently ended Test Period (and (i) for the purposes of the numerator of the Total Net Leverage Ratio and the Senior Secured Net Leverage Ratio, as if the same had occurred on the last day of the most recently ended Test Period and (ii) for all purposes, as if Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period); *provided*, *however*, that at the election of the Issuer, the *pro forma* calculation will not give effect to any Indebtedness incurred or Disqualified Stock or Preferred Stock issued on the Fixed Charge Coverage Ratio Calculation Date pursuant to the provisions described in Section 4.09(b)(other than clause (15) thereof or Indebtedness secured pursuant to clause (4) of the definition of Permitted Liens in the case of the Senior Secured Net Leverage Ratio).

For purposes of making the computation referred to above, any Specified Transaction that has been consummated by the Issuer or any Restricted Subsidiary during any Test Period or subsequent to such Test Period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date will be calculated on a *pro forma* basis assuming that all such Specified Transactions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Test Period. If since the beginning of such Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Issuer or any Restricted Subsidiary since the beginning of such Test Period will have made any Specified Transaction that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect thereto for such Test Period as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period.

For purposes of this definition, whenever *pro forma* effect is to be given to any Specified Transaction, the *pro forma* calculations will be made in good faith by a Financial Officer of the Issuer and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions and synergies projected by the Issuer in good faith to result from or relating to any Specified Transaction which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Issuer) no later than twenty-four (24) months after the date of any such Specified Transaction (in each case as though such cost savings, operating expense reductions and synergies had been realized on the first day of the applicable period and as if such cost savings, operating expense reductions and synergies were realized for the entirety of such period). For the purposes of this Indenture, "run-rate" means the full recurring benefit for a period that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target's compliance costs with public company requirements), net of the amount of actual benefits realized during such period from such actions.

If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness will be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, will be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may designate.

"Fixed Charge Coverage Ratio Calculation Date" has the meaning assigned to it in the definition of "Fixed Charge Coverage Ratio."

"Fixed Charge Coverage Test" has the meaning assigned to it in the definition of "Unrestricted Subsidiary."

"Fixed Charges" means, with respect to any Person for any period, the sum of, without duplication:

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and

(3) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

"Foreign Subsidiary" means any direct or indirect Restricted Subsidiary of the Issuer that is not a Domestic Subsidiary.

"Funded Debt" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(1) in respect of borrowed money or advances; or

(2) evidenced by indentures, bonds, notes, debentures, loan agreements or similar instruments. For the avoidance of doubt, "Funded Debt" shall not include Secured Hedging Obligations.

"GAAP" means generally accepted accounting principles in the United States of America 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 have been approved by a significant segment of the accounting profession, as in effect from time to time. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Issuer, Co-Issuer or any of the Issuer's Subsidiaries at "fair value", as defined therein.

"Global Note Legend" means the legend set forth in Section 2.06(g)(ii) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"Global Notes" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto, issued in accordance with Sections 2.01, 2.06(b) or 2.06(d) hereof.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, or otherwise, 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).

"Government Securities" means securities that are:

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

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States,

that, in either case, are not callable or redeemable at the option of the issuers thereof, and will also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"Grantor" means, for the purposes of the Collateral Trust Agreement or the Intercreditor Agreement, the Issuer, Parent, the Guarantors and any other Person (if any) that at any time provides collateral security for any Pari Passu Lien Obligations, Equipment Lease Obligations or Commercial Building Lender Obligations; and, for the purposes of this Indenture, means the Issuer and any Guarantor.

"guarantee" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"Guarantee" means the guarantee by any Person of the Issuers' Obligations under this Indenture and the Notes.

"Guarantor" means Parent (or any successor thereof) and the Subsidiary Guarantors.

"Hedge Agreement" means any agreement governing Hedging Obligations; provided that the counterparty thereto has delivered a Collateral Trust Joinder in respect thereof under the Collateral Trust Agreement. The term "Hedge Agreement" shall include both any "master agreement" and any related transaction and the related confirmations that are subject to the terms and conditions of, or governed by, any Hedge Agreement; it being understood and agreed that a Collateral Trust Joinder shall only be required once for each master agreement and shall not be required for each individual transaction or confirmation thereunder.

"Hedge Bank" means any counterparty holding Hedging Obligations under a Hedge Agreement.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer, modification or mitigation of interest rate, currency, commodity risks or equity risks either generally or under specific contingencies. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

"Holder" at any time, means the Person in whose name a Note is registered on the registrar's books at such time.

"IAI Global Note" means a Global Note substantially in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors in accordance with exemptions from the registration requirements of the Securities Act.

"Immediate Family Members" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"Incremental Amounts" has the meaning assigned to it in the definition of "Refinancing Indebtedness."

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

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

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

(c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations and Sale and Lease-Back Transactions other than Specified Sale and Lease-Back Transactions) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice and (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable;

(d) representing the net obligations under any Hedging Obligations; or

(e) Attributable Indebtedness;

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

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person;

provided that notwithstanding the foregoing, Indebtedness will be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice (including any Contingent Obligations issued in connection with operating licenses or permits), (b) reimbursement obligations under commercial letters of credit (*provided* that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn), (c) obligations under or in respect of Qualified Securitization Facilities, (d) accruals for payroll and other liabilities accrued in the ordinary course of business, and those accrued in connection with the Management Services Agreements, (e) deferred or prepaid revenues, (f) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care) and (g) obligations in connection with a Specified Sale and Lease-Back Transaction; *provided*, *further* that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

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

"Independent Assets or Operations" means, with respect to any Parent Company, that Parent Company's total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Issuer and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.00% of such Parent Company's corresponding consolidated amount.

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

"Indirect Participant" means a Person who holds a beneficial interest in a Global Note through a Participant.

"Initial Funding Date" means the first date on which both (a) the initial advance(s) of term loans has been made under the Specified Pari Passu Lien Debt Documents and (b) the only conditions to further advances of term loans under the Specified Pari Passu Lien Debt Documents are conditions precedent substantially similar to the conditions precedent set forth in the Original KfW Credit Agreement (such condition, the "Specified Commitment Condition")

"Initial Notes" means the initial $900,000,000 aggregate principal amount of Notes issued under this Indenture on the Issue Date.

"Initial Purchasers" means Goldman Sachs & Co. LLC, BofA Securities, Inc., BMO Capital Markets Corp., Crews & Associates, Inc. and Truist Securities, Inc.

"Insolvency or Liquidation Proceeding" means (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to the Issuer or any other Grantor, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Issuer or any other Grantor or with respect to any of its assets, (c) any liquidation, dissolution, reorganization or winding up of the Issuer or any other Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Issuer or any other Grantor.

"Institutional Accredited Investor" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who is not also a QIB.

"Intercreditor Agreement" means the intercreditor agreement entered into on the Issue Date, among the Collateral Agent, on its own behalf and on behalf of the Trustee, the Holders and other Secured Parties, and the ABL Agent, on its own behalf and on behalf of the lenders under the ABL Facility and any other Lenders Debt, the Equipment Lessor, the Commercial Building Lender, the Issuers and the other Grantors, as hereafter amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Interest Payment Date" means September 1 and March 1 of each year to stated maturity, beginning March 1, 2018.

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

"Investment Grade Securities" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Issuer and its Subsidiaries;

(3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice) or purchases or sales or other dispositions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definitions of "Permitted Investments" and "Unrestricted Subsidiary" and Section 4.07:

(1) "Investments" will include the portion (proportionate to the Issuer's Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided* that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Issuer will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Issuer's "Investment" in such Subsidiary at the time of such redesignation; *minus*

(b) the portion (proportionate to the Issuer's Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Issuer or a Restricted Subsidiary in respect of such Investment.

"Investor" means any of Koch Industries, Inc., TPG Capital, L.P., Arkansas Teacher Retirement System, Global Principal Partners LLC, US Steel, directly or indirectly through its Subsidiaries, any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"Issue Date" means September 18, 2020.

"Issuer" means Big River Steel LLC and its successors.

"Issuers" means the Issuer and the Co-Issuer, collectively.

"Issuers' Order" means a written request or order signed on behalf of the Issuers by an Officer of each Issuer, who must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the applicable Issuer, and delivered to the Trustee.

"Legal Holiday" means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

"Lenders Debt" means all (i) Indebtedness outstanding from time to time under the ABL Facility (including all principal, interest, fees, costs and expenses thereunder), (ii) any Indebtedness which has a priority security interest relative to the Notes in the ABL Priority Collateral pursuant to the Intercreditor Agreement, (iii) all Obligations with respect to such Indebtedness and any Hedging Obligations directly related to any Lenders Debt and (iv) all Obligations incurred with the ABL Facility Lenders (or their affiliates) in connection with the delivery of cash management and related services and other commercial bank products as described in the ABL Facility.

"Lender Representative" means each Pari Passu Lien Debt Representative, acting on behalf of the Pari Passu Lien Secured Parties represented by such Pari Passu Lien Debt Representative, the Equipment Lessor (acting on its own behalf and as servicer for certain other Persons) and the Commercial Building Lender (acting on its own behalf).

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

"Management Services Agreements" means any management services agreement, bonus agreement or similar agreements among one or more of the Investors or Management Stockholders or certain of their respective management companies or Affiliates thereof associated with it or their advisors, if applicable, and the Issuer (and/or any Parent Company) or any amendment thereto or renewal or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole, as compared to the Management Services Agreements as in effect on the Issue Date or as described in the Offering Circular with respect to the Notes.

"Management Stockholders" means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Issuer (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Issue Date.

"Market Capitalization" means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Issuer or the applicable Parent Company, as applicable, on the date of the declaration of a Restricted Payment permitted pursuant to Section 4.07(b)(8) multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

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

"Mortgage Amendment" shall mean any amendment to an existing mortgage securing the Pari Passu Lien Obligations executed and delivered by a duly authorized officer of each party to such existing Mortgage and duly acknowledged, and in suitable form for recording or filing in the recording or filing office where such existing Mortgage was recorded, together with (i) such other certificates, affidavits, questionnaires or returns as shall be required in connection with the recording or filing thereof under applicable law and (ii) any other instruments necessary pursuant to applicable laws, all of which shall be in form and substance reasonably acceptable to the Administrative Agent.

"Mortgaged Premises" means any real property which shall now or hereafter be subject to a mortgage.

"Mortgaged Property" mean any real property subject to a deed of trust or mortgage.

"Mortgages" means (i) the mortgages, debentures, hypothecs, deeds of trust, deeds to secure Indebtedness or other similar documents securing Liens on the owned real property or leased real property that is to form a portion of the Collateral and (ii) each Mortgage Amendment, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time.

"Net Cash Proceeds," with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

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

"Net Proceeds" means the aggregate cash and Cash Equivalents received by the Issuer or any Restricted Subsidiary in respect of any Asset Sale, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Issuer or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Issuer or any Restricted Subsidiary, in either case in respect of such Asset Sale, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Indenture, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) or amounts required to be applied to the repayments of Indebtedness secured by a Lien on such assets and required (other than required by Section 4.10(b)(1)) to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Issuer or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"Non-Recourse Indebtedness" means Indebtedness that is non-recourse to the Issuer and the Restricted Subsidiaries.

"Non-U.S. Person" means a Person who is not a U.S. Person.

"Notes" means the Issuers' 6.625% Senior Secured Notes due 2029 (Green Bonds). Except as otherwise provided in this Indenture, the Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"Notes Priority Collateral" means the following of any Grantor: (i) Equipment; (ii) Real Estate Assets; (iii) intellectual property; (iv) Equity Interests in all direct Subsidiaries of any Grantor; (v) intercompany indebtedness of the Issuer and its Subsidiaries; (vi) all other assets of any Grantor, whether real, personal or mixed (including the Revenue Account and other Fixed Asset Accounts and the Fixed Asset Collateral Proceeds Account), in each case, not constituting ABL Priority Collateral prior to the discharge of ABL Obligations; (vii) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all documents, general intangibles, instruments, commercial tort claims, letters of credit, letter-of-credit-rights and supporting obligations; provided, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any ABL Priority Collateral only that portion that evidences, governs, secures or reasonably relates to Notes Priority Collateral shall constitute Notes Priority Collateral; (viii) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); (ix) insurance and claims against third parties to the extent arising on account of Notes Priority Collateral (excluding, however, the proceeds of and payments under all policies of business interruption insurance); and (x) all proceeds and products of any or all of the foregoing in whatever form received, but excluding any property that is directly acquired prior to the commencement of any case or proceeding under the Bankruptcy Code or any similar Bankruptcy Law with cash proceeds of any Notes Priority Collateral and does not otherwise constitute Notes Priority Collateral upon its acquisition. Subject to certain provisions of the Intercreditor Agreement, upon a discharge of ABL Obligations, all ABL Priority Collateral shall become Notes Priority Collateral.

"Obligations" means any principal, interest (including any interest accruing on or 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 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.

"OECD" means the Organisation for Economic Co-Operation and Development.

"OECD Rules" means the OECD Arrangement on Guidelines for Officially Supported Export Credits (TAD/ECG(2017) 1) dated February 1, 2017, as amended from time to time.

"Offering Circular" means the confidential offering circular, dated September 9, 2010, relating to the sale of the Notes.

"Officer" means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of any Person. Unless otherwise indicated, Officer shall refer to an officer of the Issuer.

"Officer's Certificate" means a certificate signed on behalf of a Person by an Officer of such Person that meets the requirements set forth in this Indenture and delivered to the Trustee, *provided*, however, that if no particular Person is referenced, an Officer's Certificate shall be deemed to be an Officer's Certificate of the Issuer.

"Opinion of Counsel" means a written opinion reasonably acceptable to the Trustee from legal counsel. Counsel may be an employee of or counsel to the Issuer.

"ordinary course of business" means activity conducted in the ordinary course of business of the Issuer and any Restricted Subsidiary.

"Original KfW Credit Agreement" means that certain Senior Facilities Agreement, dated as of June 27, 2014 (as amended, supplemented or modified from time to time on or prior to August 23, 2017) among the Issuer, the guarantors party thereto, KfW IPEX-Bank GmbH, as the lead arranger and the and the other lenders party hereto, KfW IPEX-Bank GmbH, as administrative agent, and Deutsche Bank Trust Issuer Americas, as collateral agent.

"Other Pari Passu Lien Obligations" means (a) any Additional Notes, (b) all outstanding Indebtedness under, the 2020 Bond Financing Agreement and the 2019 Bond Financing Agreement, (c) Funded Debt incurred under Specified Pari Passu Lien Debt Documents, and (d) any other Indebtedness that is permitted to be secured on a pari passu basis with the Liens securing the Notes, by the Collateral and not by any other assets; provided, however, that a representative or agent with respect to such Indebtedness described in this clause (d) is a Pari Passu Lien Debt Representative under the Collateral Trust Agreement and such Indebtedness is Additional Pari Passu Lien Debt.

"Other Pari Passu Lien Obligations Debt Limit" means, as at any time of determination, an amount equal to $31,944,840 plus an amount equal to the product of (x) the aggregate amount of Capex Equity received since the Issue Date through and including such time of determination multiplied by (y) two.

"Outstanding Term Loan Threshold Date" means the date on which both (x) the aggregate outstanding principal amount of all loans and other evidences of indebtedness in respect thereof under any Replacement Credit Agreement designated as such in accordance with the Collateral Trust Agreement is less than 15% of the aggregate outstanding principal amount (and the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) of all Pari Passu Lien Debt and (y) the aggregate outstanding principal amount (and the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) of another Series of Pari Passu Lien Debt exceeds the outstanding principal amount of term loans under a Replacement Credit Agreement

"Parent Company" means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of the Issuer.

"Parent Guarantee" means a Guarantee of Parent and it successors.

"Pari Passu Indebtedness" means: (1) with respect to any Issuer, the Notes and any Indebtedness which ranks pari passu in right of payment to the Notes; and (2) with respect to any Guarantor, its Guarantee and any Indebtedness which ranks pari passu in right of payment to such Guarantor's Guarantee.

"Pari Passu Lien" means a Lien granted, or purported to be granted, by a Pari Passu Lien Security Document to the Collateral Agent, at any time, upon any property of the Issuer or any other Grantor to secure Pari Passu Lien Obligations.

"Pari Passu Lien Debt" means:

(1) any Funded Debt hereafter incurred under a replacement credit agreement designated as such in accordance with the Collateral Trust Agreement (a "Replacement Credit Agreement");

(2) (a) the Notes issued on the Issue Date and any senior secured notes issued under this Indenture (or a supplemental indenture) in exchange for the Notes, (b) any additional senior secured notes issued under this Indenture (or a supplemental indenture) from time to time and any senior secured notes issued under this Indenture in exchange for such additional senior secured notes; (c) the obligations under the 2020 Bond Financing Agreement and the Series 2020 Note (and amendments or supplements thereto or additional notes delivered in connection with the issuance of any additional bonds); and (d) the Obligations under the 2019 Bond Financing Agreement and the Series 2019 Note (and amendments or supplements thereto or additional notes delivered in connection with the issuance of any additional bonds pursuant to the 2019 Bond Indenture);

(3) any other Funded Debt (including, without limitation (x) Funded Debt incurred under any replacement Indenture, (y) Funded Debt incurred under Specified Pari Passu Lien Debt Documents or (z) borrowings under any other Pari Passu Lien Debt Documents) that is secured by a Pari Passu Lien and that was permitted to be incurred and permitted to be so secured under each applicable Pari Passu Lien Debt Document; provided, in the case of any Funded Debt referred to in this clause (3), that:

(a) on or before the date on which such Funded Debt is incurred by the Issuer or by another Grantor, such Funded Debt is designated by the Issuer as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement;

(b) unless such Funded Debt is issued under an existing Pari Passu Lien Debt Document for any Series of Pari Passu Lien Debt whose Pari Passu Lien Debt Representative is already party to the Collateral Trust Agreement, the Pari Passu Lien Debt Representative for such Funded Debt executes and delivers a Collateral Trust Joinder in accordance with the Collateral Trust Agreement; and

(c) all other requirements for the Additional Pari Passu Lien Obligations Debt Designations set forth in the Collateral Trust Agreement have been complied with.

For the avoidance of doubt, (i) Secured Hedging Obligations do not constitute Pari Passu Lien Debt but may constitute Pari Passu Lien Obligations and (ii) Equipment Lease Obligations and Commercial Building Lender Obligations do not constitute Pari Passu Lien Debt.

"Pari Passu Lien Debt Documents" means this Indenture, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement, a Replacement Credit Agreement and any other indenture, notes, credit agreement or other agreement or instrument pursuant to which any Pari Passu Lien Debt is incurred (including, without limitation, the Specified Pari Passu Lien Debt Documents) and the Pari Passu Lien Security Documents.

"Pari Passu Lien Debt Representative" means:

(1) in the case of this Indenture, the Trustee;

(2) in the case of the 2020 Bond Financing Agreement, the trustee for the 2020 Bonds, in the case of the 2019 Bond Financing Agreement, the trustee for the 2019 Bonds and, in the case of a Replacement Credit Agreement, the agent or other representative thereunder;

(3) in the case of the Specified Pari Passu Lien Debt Documents, the Specified Pari Passu Lien Debt Representative;

(4) in the case of any other Series of Pari Passu Lien Debt, the trustee, agent or representative of the holders of such Series of Pari Passu Lien Debt who maintains the transfer register for such Series of Pari Passu Lien Debt or is appointed as a representative of the Pari Passu Lien Debt (for purposes related to the administration of the Pari Passu Lien Security Documents) pursuant to this Indenture, credit agreement or other agreement governing such Series of Pari Passu Lien Debt, and who has executed a Collateral Trust Joinder; and

(5) in the case of any Secured Hedging Obligations owing to a Hedge Bank, such Hedge Bank.

"Pari Passu Lien Obligations" means the Pari Passu Lien Debt and all other Obligations in respect of Pari Passu Lien Debt, together with Secured Hedging Obligations, including any post-petition Interest whether or not allowable, and all guarantees of any of the foregoing. In addition to the foregoing, all obligations owing to the Collateral Agent in its capacity as such, whether pursuant to the Collateral Trust Agreement or one or more of the Pari Passu Lien Debt Documents, shall in each case be deemed to constitute Pari Passu Lien Obligations (with the obligations described in this sentence being herein the "Collateral Agent Obligations"), which Collateral Agent Obligations shall be entitled to the priority provided in the Collateral Trust Agreement. For the avoidance of doubt, Equipment Lease Obligations and Commercial Building Lender Obligations do not constitute Pari Passu Lien Obligations.

"Pari Passu Lien Secured Parties" means the holders of Pari Passu Lien Obligations, each Pari Passu Lien Debt Representative and the Collateral Agent.

"Pari Passu Lien Security Documents" means all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, consent or direct arrangements (including any Direct Agreements), or other grants or transfers for security executed and delivered by the Issuer or any other Grantor creating or perfecting (or purporting to create or perfect) or governing rights of enforcement with respect to, a Lien upon Collateral in favor of the Collateral Agent, for the benefit of any of the Pari Passu Lien Secured Parties, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and as described in the Intercreditor Agreement.

"Participant" means, with respect to the Depositary, a Person who has an account with the Depositary (and, with respect to DTC, shall include Euroclear and Clearstream).

"Permitted Asset Swap" means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Issuer or any Restricted Subsidiary and another Person; *provided* that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with Section 4.10.

"Permitted Bond Hedge Transaction" means any call or capped call option (or substantially equivalent derivative transaction) on the Issuer's common stock purchased by the Issuer in connection with the issuance of any Convertible Indebtedness; *provided* that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Issuer from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Issuer from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

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

"Permitted Holder" means (1) any of the Investors, Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of any such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively, have, directly or indirectly, beneficial ownership of more than 50.00% of the total voting power of the Voting Stock of the Issuer and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Issuer or any Parent Company. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which any required Change of Control Offer is made in accordance with the requirements of this Indenture (or would have required a Change of Control Offer in the absence of the waiver of such requirement by Holders in accordance with the provisions of this Indenture) will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"Permitted Investments" means:

(1) any Investment in the Issuer or any Guarantor (including guarantees of obligations of the Guarantors);

(2) any Investment in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) any Investment by the Issuer or any Restricted Subsidiary in a Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business, or in a business unit, line of business or division of such Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary (and in the event such Investment was made by the Issuer or a Guarantor, becomes a Guarantor); or

(b) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting such business unit, line of business or division in which such Investment was made, as applicable, to, or is liquidated into, the Issuer or a Restricted Subsidiary (and in the event such Investment was made by the Issuer or a Guarantor, such amalgamation, merger, consolidation, transfer or conveyance is made to a Guarantor);

and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

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

(5) any Investment existing on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Issue Date; *provided* that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on the Issue Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under this Indenture;

(6) any Investment by the Issuer or any Restricted Subsidiary:

(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Issuer or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Issuer or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Issuer or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer.

(7) Hedging Obligations permitted under Section 4.09(b)(11);

(8) any Investment in a Similar Business, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (a) $80.0 million and (b) 25% of Consolidated EBITDA of the Issuer and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

(9) Investments the payment for which consists of, or are funded by the sale of, Equity Interests (other than Disqualified Stock) of the Issuer or any Parent Company or are funded from cash equity contributions to the capital of the Issuer; *provided* that such Equity Interests, the proceeds from the sale of any such Equity Interests, and such contributions to the capital of the Issuer, will not increase the amount available for Restricted Payments under Section 4.07(a)(3);

(10) (a) guarantees of Indebtedness permitted under Section 4.09, performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice and (b) the creation of Liens on the assets of the Issuer or any Restricted Subsidiary in compliance with Section 4.12;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with Section 4.11(b) (except transactions described in clause (2), (6), (10), (16) or (23) of such paragraph);

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

(13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (a) $80.0 million and (b) 25% of Consolidated EBITDA of the Issuer determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Issuer, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation in connection therewith (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Issuer or any Restricted Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, members of management and independent contractors not in excess of $2.0 million outstanding at any one time, in the aggregate;

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, including pursuant to Management Services Agreements, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Issuer or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Issuer or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Issuer or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;

(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (a) $40.0 million and (b) 15% of Consolidated EBITDA of the Issuer and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

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

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Issuer or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(26) any Investment, constituting Indebtedness, by the Issuer or a Subsidiary Guarantor, in a Restricted Subsidiary that is not a Wholly-Owned Subsidiary of the Issuer or such Guarantor, the net proceeds of which are used by such Restricted Subsidiary to make any Capital Expenditures for the purpose of increasing the earnings capacity in such Restricted Subsidiary, in a Similar Business; *provided* that (i) such Investment is secured by a first priority Lien on all of the assets and property of such Restricted Subsidiary that would constitute Notes Priority Collateral if such property or assets were Collateral (prior to all Liens on such assets and property that would constitute ABL Priority Collateral if such assets and property were Collateral), (ii) such Investment is collaterally assigned in favor of the Collateral Agent as Notes Priority Collateral and (iii) the assets and property of such Restricted Subsidiary (other than assets and property that would constitute ABL Priority Collateral if such assets and property were Collateral)are not otherwise subject to any Lien other than Permitted Restricted Subsidiary Liens;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Issuer and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Issuer or any Subsidiary of the Issuer in connection with such director's, officer's, employee's, consultant's or independent contractor's acquisition of Equity Interests of the Issuer or any direct or indirect parent of the Issuer, to the extent no cash is actually advanced by the Issuer or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens";

(31) loans and advances to any direct or indirect parent of the Issuer in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 4.07 at such time, such Investment being treated for purposes of the applicable clause of Section 4.07, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;

(32) any other Investments if on a *pro forma* basis after giving effect to such Investment, the Total Net Leverage Ratio would be equal to or less than 3.00 to 1.00 as of the last day of the Test Period most recently ended;

(33) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 4.10; and

(34) Permitted Bond Hedge Transactions.

For purposes of determining compliance with this definition, (A) an Investment need not be incurred solely by reference to one category of Permitted Investments described in this definition but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that an Investment (or any portion thereof) meets the criteria of one or more of the categories of Permitted Investments, the Issuer will, in its sole discretion, classify or reclassify such Investment (or any portion thereof) in any manner that complies with this definition and Section 4.07.

"Permitted Liens" means, with respect to any Person:

(1) Liens securing Obligations in respect of the Notes and the Guarantees (but excluding any Additional Notes and related guarantees), the 2020 Bond Financing Agreement and the Series 2020 Note, the 2019 Bond Financing Agreement and the Series 2019 Note and any guarantees thereof;

(2) Liens securing Obligations in respect of Indebtedness permitted to be incurred under any Credit Facility, including any letter of credit facility relating thereto, that was permitted to be incurred pursuant to Section 4.09(b)(1), *provided* that any such Lien will be subject to the Intercreditor Agreement, as required therein;

(3) Liens securing Other Pari Passu Lien Obligations permitted by the terms of this Indenture to be incurred pursuant to Section 4.09(b)(2), *provided* that any such Lien will be subject to the Collateral Trust Agreement and the Intercreditor Agreement, as required therein;

(4) Liens securing Pari Passu Lien Obligations in respect of Indebtedness permitted to be incurred under Section 4.09; *provided* that at the time of incurrence (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this subclause) and after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Issuer's Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred would not exceed 3.00 to 1.00; *provided further* that any such Lien will be subject to the Collateral Trust Agreement and the Intercreditor Agreement, as required therein;

(5) Liens, pledges or deposits by such Person made in connection with (A) workers' compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations, (B) insurance-related obligations (including, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance, or otherwise supporting the payment of items set forth in the foregoing clause (A), or (C) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness), or deposits to secure public or statutory obligations of such Person or deposits of cash, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(6) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction and mechanics' Liens and other similar Liens, or similar landlord Liens specifically created by contract, and (i) for sums not yet overdue for a period of more than 60 days or, if more than 60 days overdue, are unfiled and no other action has been taken to enforce such Liens or (ii) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(7) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

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

(9) survey exceptions, encumbrances, covenants, conditions, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television 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 or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person;

(10) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to Sections 4.09(b)(5), (7), (14), (15) or (16); *provided* that:

(a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to Section 4.09(b)(14) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of "Refinancing Indebtedness"), plus improvements, accessions, proceeds or dividends or distributions in respect thereof and After-Acquired Property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness incurred under Sections 4.09(b)(5) or (14),

(b) [Reserved],

(c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to Section 4.09(b)(5) extend only to the assets so purchased, constructed, replaced, leased or improved and proceeds and products thereof; *provided*, *further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty,

(d) Liens securing Obligations in respect of Indebtedness permitted to be incurred pursuant to Section 4.09(b)(15) are solely on acquired property or the assets of the acquired entity, and

(e) Liens securing Obligations in respect of Indebtedness permitted to be incurred pursuant to clause (15), after giving pro forma effect to such Indebtedness secured by such Lien and the application of the net proceeds therefrom, the Issuer's Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred after giving pro forma effect to the incurrence of the entire committed amount of Indebtedness thereunder, would (a) be no less than the Senior Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Indebtedness secured by such Lien or (b) not exceed 3.00 to 1.00;

(11) Liens existing, or provided for under binding contracts existing, on the Issue Date (other than Liens securing Obligations under the ABL Facility, the 2020 Bond Financing Agreement and related guarantees, the 2019 Bond Financing Agreement and related guarantees or to secure the Notes and related Guarantees issued on the Issue Date);

(12) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Indenture); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(13) Liens on property or other assets at the time the Issuer or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Issuer or any Restricted Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Indenture); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(14) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer or another Restricted Subsidiary permitted to be incurred in accordance with Section 4.09;

(15) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services;

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

(17) leases, subleases, licenses or sublicenses (or other agreement under which the Issuer or any Restricted Subsidiary has granted rights to end users to access and use the Issuer's or any Restricted Subsidiary's products, technologies or services) that do not either (a) materially interfere with the business of the Issuer and its Restricted Subsidiaries, taken as a whole, or (b) secure any Indebtedness;

(18) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(19) Liens in favor of the Issuer or the Co-Issuer or any Guarantor;

(20) Liens on equipment or vehicles of the Issuer or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(21) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility and Liens on any receivables transferred in connection with a Receivables Financing Transaction, including Liens on such receivables resulting from precautionary Uniform Commercial Code filings or from recharacterization of any such sale as a financing or a loan;

(22) Liens to secure any modification, refinancing, refunding, extension, renewal, replacement or defeasance (or successive modification, refinancing, refunding, extensions, renewals, replacements or defeasances) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (1), (3), (4), (10), (11), (12), (13) or this clause (22) of this definition; *provided* that (a) such new Lien will be limited to all or part of the same property that secured the original Lien (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and After-Acquired Property) and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (1), (3), (4), (10), (11), (12), (13) or this clause (22) of this definition at the time the original Lien became a Permitted Lien under this Indenture, *plus* (ii) any accrued and unpaid interest on the Indebtedness being so modified, refinanced, extended, replaced, refunded, renewed or defeased *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness or the modification, extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness; *provided*, further that that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clauses (4) or (10), the principal amount of any Indebtedness Incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clauses (4) or (10) and not this clause (22) for purposes of determining the principal amount of Indebtedness outstanding under clause (4) or (10);

(23) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens or insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(24) other Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) $100.0 million and (ii) 35% of Consolidated EBITDA of the Issuer and the Restricted Subsidiaries determined at the time of incurrence of such Lien for the most recently ended Test Period (calculated on a *pro forma* basis);

(25) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(26) (i) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (ii) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (iii) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(27) Liens securing judgments for the payment of money not constituting an Event of Default under Section 6.01(5);

(28) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice, and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of set-off) and that are within the general parameters customary in the banking industry;

(29) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Indenture; *provided* that such Liens do not extend to any assets other than those that are subject to such repurchase agreements;

(30) Liens that are contractual rights of set-off (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Issuer and its Restricted Subsidiaries or (c) relating to purchase orders and other agreements entered into with customers of the Issuer or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(31) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(32) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(33) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Indenture to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted pursuant to Section 4.10;

(34) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Issuer or any of its Subsidiaries are located, *provided* such ground leases, subleases, licenses or sublicenses do not materially impair the use of the remainder of the Mortgaged Property and are subordinate to the lien of the Mortgages;

(35) Liens in connection with a Specified Sale and Lease-Back Transaction and any leasehold mortgage or similar Lien on the associated Lease;

(36) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(37) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Issuer or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(38) deposits of cash with the owner or lessor of premises leased and operated by the Issuer or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Issuer and such Subsidiary to secure the performance of the Issuer's or such Subsidiary's obligations under the terms of the lease for such premises;

(39) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(40) Liens on cash and Cash Equivalents used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under this Indenture;

(41) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(42) agreements to subordinate any interest of the Issuer or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Issuer or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(43) Liens securing Guarantees of any Indebtedness or other obligations otherwise permitted to be secured by a Lien under this Indenture;

(44) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any environmental law;

(45) Liens disclosed by the title insurance reports or policies delivered on or prior to the Issue Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Indenture); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(46) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Issuer or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(47) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with;

(48) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(49) zoning, building and other similar land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements; *provided* that such restrictions and agreements are complied with;

(50) Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable law;

(51) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose; and

(52) any Lien contemplated by clause (26) of the definition of "Permitted Investments".

If any Liens are incurred to secure obligations incurred to refinance obligations initially incurred in reliance on a basket measured by reference to a percentage of Consolidated EBITDA, and such refinancing would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, plus any accrued and unpaid interest on the Indebtedness (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such refinancing Indebtedness) *plus* the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness.

For purposes of this definition, the term "Indebtedness" will be deemed to include interest and other obligations payable on and with respect to such Indebtedness.

"Permitted Prior Lien" means any Lien that has priority over the Lien of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties which Lien was permitted under each Pari Passu Lien Debt Document.

"Permitted Restricted Subsidiary Liens" means clauses (5) through (9), (10) (with respect to Sections 4.09(b)(5), (7) and (14); *provided* that, with respect to such Section 4.09(b)(14), only with respect to Section 4.09(b)(5)), (12) through (21), (22) (with respect to clauses (12), (13) and (22)), (23) through (35), (37) through (42), (44) through (49), (51) and (52) of the definition of "Permitted Liens".

"Permitted Warrant Transaction" means any call option, warrant or right to purchase (or substantially equivalent derivative transaction) on the Issuer's or a Parent Company's common stock sold by the Issuer or a Parent Company substantially concurrently with a related Permitted Bond Hedge Transaction.

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

"Phase II Project" means any capacity addition, line extension or addition of value-added product facilities, in a Similar Business, at the steel mini-mill located in Mississippi County, Arkansas.

"Phase II Project Costs" means all costs and expenses to be incurred by Parent, the Issuer or any Restricted Subsidiary in connection with the Development of the Phase II Project, and incurred after August 23, 2017, including, without limitation, the purchase of equipment and related services, the training of personnel relating to the Phase II Project, the financing of the Phase II Project, including interest expense incurred during Development, and activities reasonably related thereto.

"Post-Petition Interest" means interest, fees, expenses and other charges that pursuant to the ABL Credit Agreement, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement or any other Fixed Asset Pari Passu Lien Debt Documents (including this Indenture and any Specified Pari Passu Lien Debt Documents), continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Code or in any such Insolvency or Liquidation Proceeding.

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

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

"Public Company Costs" means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Issuer's or its Restricted Subsidiaries' initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

"Purchase Money Obligations" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

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

"Qualified Capital Contribution" means cash common equity capital contributions to, or cash proceeds from the issuance of Capital Stock in, Big River Steel Holdings LLC, a Delaware limited liability company, which Big River Steel Holdings LLC, upon receipt, contributes to Parent, which in turn, upon receipt, contributes to the Issuer.

"Qualified Equity Interests" means Equity Interests that are not Disqualified Stock.

"Qualified Proceeds" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"Qualified Securitization Facility" means any Securitization Facility (1) constituting a securitization financing facility that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Issuer and the applicable Restricted Subsidiary or Securitization Subsidiary and (b) all sales and/or contributions of Securitization Assets and related assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Issuer) or (2) constituting a receivables financing facility.

"Rating Agencies" means Moody's and S&P or if Moody's or S&P or if both do not make a rating on the Notes publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Issuer which will be substituted for Moody's or S&P or both, as the case may be.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) of any Grantor in any real property, including Mortgaged Premises, distribution centers and warehouses and corporate headquarters and administrative offices.

"Receivables Financing Transaction" means any transaction or series of transactions entered into by the Issuer, Co-Issuer or any Restricted Subsidiary pursuant to which such party consummates a "true sale" of its receivables to a nonrelated third party on market terms as determined in good faith by the Issuer; *provided* that such Receivables Financing Transaction is (i) non-recourse to Parent, the Issuer, Co-Issuer and the Restricted Subsidiaries and their assets, other than any recourse solely attributable to a breach by Parent, the Issuer, Co-Issuer or any Restricted Subsidiary of representations and warranties that are customarily made by a seller in connection with a "true sale" of receivables on a non-recourse basis and (ii) consummated pursuant to customary contracts, arrangements or agreements entered into with respect to the "true sale" of receivables on market terms for similar transactions.

"Record Date" for the interest payable on any applicable Interest Payment Date means the January 15 and July 15 (whether or not a Business Day) immediately preceding such Interest Payment Date.

"Refinance" has the meaning assigned in the definition of "Refinancing Indebtedness" and "Refinancing" and "Refinanced" have meanings correlative to the foregoing.

"Refinanced Debt" has the meaning assigned to such term in the definition of "Refinancing Indebtedness."

"Refinancing Indebtedness" means (x) Indebtedness incurred by the Issuer or any Restricted Subsidiary, (y) Disqualified Stock issued by the Issuer or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease ("Refinance") any Indebtedness, Disqualified Stock or Preferred Stock, including Refinancing Indebtedness, so long as:

(1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) the Indebtedness, the amount of the Preferred Stock or the liquidation preference of the Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the "Refinanced Debt"), *plus* (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, *plus* (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clauses (b) and (c), the "Incremental Amounts");

(2) such Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt;

(b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the maturity date of the Notes); and

(3) to the extent such Refinancing Indebtedness Refinances (i) Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 4.07, such Refinancing Indebtedness is subordinated to the Notes or the Guarantee thereof at least to the same extent as the applicable Refinanced Debt or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively.

Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Subsidiary Guarantor or the Co-Issuer that refinances Indebtedness or Disqualified Stock of the Issuer;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Issuer that is not a Subsidiary Guarantor or the Co-Issuer that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor or the Co-Issuer; or

(c) Indebtedness or Disqualified Stock of the Issuer or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary,

and, *provided*, *further* that (x) clause (2) of this definition will not apply to any Refinancing of any Indebtedness other than Indebtedness incurred under Sections 4.09(b)(3), any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof), Disqualified Stock and Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary "rollover" provisions and (y) assuming such credit facility were to be extended pursuant to such "rollover" provisions, such extended credit facility would comply with clause (2) of this definition).

"Regulation S" means Regulation S promulgated under the Securities Act.

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

"Regulation S Permanent Global Note" means a permanent Global Note in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the applicable Restricted Period.

"Regulation S Temporary Global Note" means a temporary Global Note in the form of Exhibit A hereto, bearing the Global Note Legend, the Private Placement Legend and the Regulation S Temporary Global Note Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903.

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

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

"Replacement Credit Agreement" has the meaning assigned to such term in the definition of Pari Passu Lien Debt.

"Required Delayed Draw Term Lenders" means the "Required Senior Term Lenders" (or an equivalent term with substantially similar meaning as the meaning of such term in the Original KfW Credit Agreement) under and as defined in the Specified Pari Passu Lien Debt Documents.

"Responsible Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any director, vice president, assistant vice president, any trust officer or assistant trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter relating to this Indenture is referred because of such Person's knowledge of and familiarity with the particular subject and who, in each case, shall have direct responsibility for the administration of this Indenture.

"Restricted Definitive Note" means a Definitive Note bearing, or that is required to bear, the Private Placement Legend.

"Restricted Global Note" means a Global Note bearing, or that is required to bear, the Private Placement Legend.

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

"Restricted Period" means, in respect of any Note issued pursuant to Regulation S, the 40-day distribution compliance period (as defined in Regulation S) applicable to such Note.

"Restricted Subsidiary" means, at any time, any direct or indirect Subsidiary of the Issuer (including any Foreign Subsidiary and the Co-Issuer) that is not then an Unrestricted Subsidiary; *provided* that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of "Restricted Subsidiary." Wherever the term "Restricted Subsidiary" is used herein with respect to any Subsidiary of a referenced Person that is not the Issuer, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Issuer on a *pro forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Issuer (unless such transactions would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a *pro forma* basis in accordance with this Indenture).

"Revenue Account" means the account entitled the "Revenue Account" held by the Depositary Bank under the Deposit Agreement.

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A promulgated under the Securities Act.

"Rule 903" means Rule 903 promulgated under the Securities Act.

"Rule 904" means Rule 904 promulgated under the Securities Act.

"S&P" means Standard & Poor's, a division of S&P Global Inc., and any successor to its rating agency business.

"Sale and Lease-Back Transaction" means any arrangement providing for the leasing by the Issuer or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing. The net proceeds of any Sale and Lease-Back Transaction will be determined giving effect to transaction expenses and the tax effect of such transactions (including taxes paid or payable and tax attributes used as a result of such transactions).

"SCF" means Stonebriar Commercial Finance LLC, a Delaware limited liability company.

"SEC" means the U.S. Securities and Exchange Commission or any governmental authority succeeding to any of its principal functions.

"Second Specified Pari Passu Lien Debt Threshold Date" means the date, after the occurrence of the First Specified Pari Passu Lien Debt Threshold Date, on which the sum of (1) the outstanding principal amount of the term loans under the Specified Pari Passu Lien Debt Documents plus (2) from and after the occurrence of the Initial Funding Date, the commitments under the Specified Pari Passu Lien Debt Documents subject to the Specified Commitment Condition is less than 50% of the aggregate outstanding principal amount of all Pari Passu Lien Debt or less than the aggregate outstanding principal amount of the largest Series of Pari Passu Lien Debt other than the Pari Passu Lien Debt incurred under the Specified Pari Passu Lien Debt Documents.

"Secured Hedging Obligations" means any Hedging Obligations under a Hedge Agreement entered into between the Issuer or another Grantor and a Hedge Bank or any guarantee thereof by the Issuer or another Grantor.

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

"Secured Parties" means (a) the Collateral Agent, (b) each Holder, (c) the Trustee, (d) each other Pari Passu Lien Secured Party and (e) the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, all former Collateral Agent, Holder, Trustee and the Pari Passu Lien Secured Party to the extent that any Obligations owing to such Persons were incurred while such Persons were Collateral Agent, Holder, Trustee or Pari Passu Lien Secured Party and such Obligations have not been paid or satisfied in full.

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

"Securitization Assets" means (a) the accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

"Securitization Facility" means any transaction or series of securitization financings that may be entered into by the Issuer or any Restricted Subsidiary pursuant to which the Issuer or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Issuer or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Issuer or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Issuer or any of its Subsidiaries.

"Securitization Fees" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

"Securitization Subsidiary" means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

"Security Documents" means the Collateral Trust Agreement, each Additional Pari Passu Lien Debt Designation, each of the other Pari Passu Lien Security Documents, each of the other security agreements, pledge agreements, mortgages, deeds of trust, collateral assignments, agreements creating a security interest, charge or encumbrance of any kind, and related agreements, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating the security interests in the Collateral as contemplated by the Collateral Trust Agreement.

"Senior Indebtedness" means:

(1) all Indebtedness of the Issuer or the Co-Issuer or any Subsidiary Guarantor outstanding under the ABL Facility, the 2020 Bond Financing Agreement and related guarantees, the 2019 Bond Financing Agreement and related guarantees and the Notes and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Issuer or the Co-Issuer or any Subsidiary Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts and all obligations of the Issuer or the Co-Issuer or any Subsidiary Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(2) all (a) Hedging Obligations (and guarantees thereof) and (b) obligations in respect of Cash Management Services (and guarantees thereof), in the case of each of clauses (a) and (b), owing to a lender under the ABL Facility or any Affiliate of such lender (or any Person that was a lender or an Affiliate of such lender at the time the applicable agreement giving rise to such Hedging Obligation or Cash Management Obligations was entered into); *provided* that such Hedging Obligations and obligations in respect of Cash Management Services, as the case may be, are permitted to be incurred under the terms of this Indenture;

(3) any other Indebtedness of the Issuer or the Co-Issuer or any Subsidiary Guarantor permitted to be incurred under the terms of this Indenture, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Notes or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clauses (1), (2) and (3);

provided that Senior Indebtedness will not include:

(a) any obligation of such Person to the Issuer or any of its Subsidiaries;

(b) any liability for federal, state, local or other taxes owed or owing by such Person;

(c) any accounts payable or other liability to trade creditors arising in the ordinary course of business or consistent with industry practice;

(d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or

(e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of this Indenture.

"Senior Secured Net Leverage Ratio" means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding on the last day of such Test Period *minus* the aggregate amount of cash and Cash Equivalents of the Issuer and the Restricted Subsidiaries on such date that (x) would not appear as "restricted" on a consolidated balance sheet of the Issuer and the Restricted Subsidiaries or (y) are restricted in favor of the lenders or investors under the ABL Facility, or Other Pari Passu Lien Obligations, to (b) Consolidated EBITDA of the Issuer for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* provisions set forth in the definition of "Fixed Charge Coverage Ratio."

"Series 2019 Note" means the Closed End Line of Credit Promissory Note, Series 2020, dated May 31, 2019 from the Issuer to the Bond Issuer, and assigned to the trustee of the 2019 Bonds, issued to secure the Issuer's obligations under the 2019 Bond Financing Agreement, and any other promissory note delivered in connection with additional bonds.

"Series 2020 Note" means the Closed End Line of Credit Promissory Note, Series 2020, dated September 10, 2020, from the Issuer to the Bond Issuer, and assigned to the trustee of the 2020 Bonds, issued to secure the Issuer's obligations under the 2020 Bond Financing Agreement, and any other promissory note delivered in connection with additional bonds.

"Series of Pari Passu Lien Debt" means, severally, Funded Debt under this Indenture, the Specified Pari Passu Lien Debt Documents, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement and each other issue or series of Pari Passu Lien Debt for which a single transfer register is maintained.

"Significant Subsidiary" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Issue Date; *provided* that notwithstanding the foregoing, in no event will any Securitization Subsidiary be considered a Significant Subsidiary for purposes of Sections 6.01(4), (5), (6) or (7).

"Similar Business" means (1) any business conducted or proposed to be conducted by the Issuer or any Restricted Subsidiary on the Issue Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses which the Issuer and its Restricted Subsidiaries conduct or propose to conduct on the Issue Date. The Mid-River Terminal, as described in the Offering Circular, is considered to be complementary to the business of the Issuer for purposes of this definition.

"Specified Commitment Condition" has the meaning specified in the definition of Initial Funding Date.

"Specified Pari Passu Lien Debt Representative" means KfW IPEX-Bank GmbH, whether acting in its own capacity or as agent to the lenders under any Specified Pari Passu Lien Debt Document or any of its Affiliates, or any other such representative that has been designated as "Specified Pari Passu Lien Debt Representative" by the Issuer in accordance with the Collateral Trust Agreement, that delivers a Collateral Trust Joinder in the form of Exhibit B to the Collateral Trust Agreement. As of the Issue Date, no representative has delivered such a Collateral Trust Joinder.

"Specified Pari Passu Lien Debt Documents" means (a) any credit agreement described in the Collateral Trust Joinder delivered by the Specified Pari Passu Lien Debt Representative governing Funded Debt that is designated by the Issuer as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement and (b) any other credit agreement entered into subsequent to the delivery of the Collateral Trust Joinder described in clause (a) above governing another Series of Pari Passu Lien Debt for which the Specified Pari Passu Lien Debt Representative maintains the transfer register and is appointed as a representative of the Pari Passu Lien Debt (for purposes related to the administration of the Pari Passu Lien Security Documents) pursuant to such credit agreement or other agreement and which governs Funded Debt that is designated by the Issuer as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement; provided, however, that no credit agreement may be designated as, or deemed to be, a "Specified Pari Passu Lien Debt Document" if such credit agreement provides for any of the following: (i) payment of interest in cash rather than solely in kind during a Specified SPOC Period, (ii) scheduled amortization payments of principal or other repayments of principal during a Specified SPOC Period (it being understood that such credit agreement will have scheduled amortization payments of principal following the expiration of the Specified SPOC Period and that none of the foregoing shall prohibit the payment of interest in cash or payment of principal during the Specified SPOC Period as long as such payment is in each case funded solely with the proceeds of Qualified Capital Contributions), or (iii) the scheduled final maturity of the Funded Debt evidenced thereby that is prior to the scheduled final maturity of the Notes. As of the Issue Date, no such Collateral Trust Joinder or Additional Pari Passu Lien Debt Designation has been delivered.

"Specified Sale and Lease-Back Transaction" means any arrangement providing for the leasing by the Issuer or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to a Governmental Authority in contemplation of such leasing, and which is in connection with the purchase by the Issuer or an Affiliate of industrial development revenue bonds, or similar instruments, of a Governmental Authority and pursuant to which payments of principal, premiums and interest thereon are payable solely from income derived by such Governmental Authority from such leasing arrangement, including the arrangement contemplated by the Act 9 Bond Documents solely to the extent that parties under the Act 9 Bond Documents "net settle" any and all payments under such arrangement pursuant to the terms thereof, including pursuant to the Home Office Payment Agreement, dated as of April 28, 2015.

"Specified SPOC Period" means a period after the Initial Funding Date ending on the earlier to occur of (i) 6 months following SPOC and (ii) 30 months following the Initial Funding Date.

"Specified Transaction" means (i) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Issuer, in each case, in connection with an acquisition or Investment, (ii) any designation of operations or assets of the Issuer or a Restricted Subsidiary as discontinued operations (as defined under GAAP), (iii) any Investment that results in a Person becoming a Restricted Subsidiary, (iv) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with this Indenture, (v) any purchase or other acquisition of a business of any Person, or assets constituting a business unit, line of business or division of any Person, (vi) any Asset Sale (without regard to any *de minimis* thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Issuer or (b) of a business, business unit, line of business or division of the Issuer or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise, (vii) any operational changes identified by the Issuer that have been made by the Issuer or any Restricted Subsidiary during the Test Period or (viii) any Restricted Payment or other transaction that by the terms of this Indenture requires a financial ratio to be calculated on a *pro forma* basis.

"SPOC" means the "starting point of credit" as determined pursuant and in accordance with the OECD Rules and any other applicable policies and regulations of any relevant export credit agency.

"Subordinated Indebtedness" means, with respect to the Notes:

(1) any Indebtedness of the Issuer or the Co-Issuer that is by its terms subordinated in right of payment to the Notes, and

(2) any Indebtedness of any Guarantor that is by its terms subordinated in right of payment to the Guarantee of such entity of the Notes.

"Subsidiary" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.00% of the total voting power of Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.00% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" refer to a Subsidiary or Subsidiaries of the Issuer.

"Subsidiary Guarantee" means the Guarantee of a Subsidiary Guarantor.

"Subsidiary Guarantor" means each Restricted Subsidiary of the Issuer (other than the Co- Issuer), if any, that Guarantees the Notes in accordance with the terms of this Indenture (excluding any Parent Company that guarantees the Notes).

"Term Loan Administrative Agent" means Goldman Sachs Bank USA.

"Term Loan Credit Agreement" means the first lien secured term loan credit agreement, dated as of August 23, 2017, by and among the Issuer, Parent, Goldman Sachs Bank USA, as the administrative agent, and the lenders and other entities party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement thereof if such replacement thereof which has been designated as Additional Pari Passu Lien Debt under the Collateral Trust Agreement.

"Test Period" in effect at any time means the Issuer's most recently ended four consecutive fiscal quarters for which internal financial statements are available (as determined in good faith by the Issuer); *provided* that prior to the first date on which financial statements have been delivered pursuant to Section 4.03, the Test Period in effect will be the period of four consecutive fiscal quarters of the Issuer ended June 30, 2020.

"Total Net Leverage Ratio" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding on the last day of such Test Period *minus* the aggregate amount of cash and Cash Equivalents of the Issuer and the Restricted Subsidiaries on such date that (x) would not appear as "restricted" on a consolidated balance sheet of the Issuer or (y) are restricted in favor of the ABL Facility or Other Pari Passu Lien Obligations, to (b) Consolidated EBITDA of the Issuer for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

"Transaction Expenses" means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, the Issuer or any Restricted Subsidiary in connection with the Transactions, including expenses in connection with hedging transactions, if any, and the repayment or refinancing of existing indebtedness.

"Transactions" means the issuance of the Notes and the use of proceeds thereof, and the payment of Transaction Expenses.

"Treasury Rate" means, as of any Redemption Date, the weekly average rounded to the nearest 1/100th of a percentage point (for the most recently completed week for which such information is available as of the date that is two business days prior to the Redemption Date) of the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 with respect to each applicable day during such week (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to September 15, 2023; *provided*, *however*, that if the period from the Redemption Date to September 15, 2023 is not equal to the constant maturity of a United States Treasury Security for which such yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury Securities for which such yields are given, except that if the period from the Redemption Date to such date is less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-777bbbb).

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

"Uniform Commercial Code" or "UCC" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions of the Pari Passu Lien Security Documents relating to such perfection, priority or remedies.

"Unrestricted Definitive Note" means one or more Definitive Notes that do not bear and are not required to bear the Private Placement Legend.

"Unrestricted Global Note" means a permanent Global Note, substantially in the form of Exhibit A hereto, that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear and are not required to bear the Private Placement Legend.

"Unrestricted Subsidiary" means:

(1) any Subsidiary of the Issuer which at the time of determination is an Unrestricted Subsidiary (as designated by the Issuer, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Issuer may designate any Subsidiary of the Issuer (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Issuer or any Subsidiary of the Issuer (other than solely any Subsidiary of the Subsidiary to be so designated); *provided*:

(1) such designation complies with Section 4.07; and

(2) each of (a) the Subsidiary to be so designated and (b) its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Issuer or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary).

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to such designation, no Event of Default will have occurred and be continuing and the Issuer could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) (the "Fixed Charge Coverage Test").

Any such designation by the Issuer will be notified by the Issuer to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

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

"US Steel" means United States Steel Corporation.

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

"Weighted Average Life to Maturity" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, *multiplied* by the amount of such payment; by

(2) the sum of all such payments;

provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the "Applicable Indebtedness"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

"Wholly-Owned Subsidiary" of any Person means a Subsidiary of such Person, 100.00% of the outstanding Equity Interests of which (other than directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required under applicable law) is at the time owned by such Person and/or by one or more Wholly-Owned Subsidiaries of such Person.

"Wholly-Owned Restricted Subsidiary" is any Wholly-Owned Subsidiary that is a Restricted Subsidiary.

SECTION 1.02. Other Definitions.

Term	Defined in Section
"Acceptable Commitment"	4.10(b)(2)
"Advance Offer"	4.10(d)
"Advance Portion"	4.10(d)
"Affiliate Transaction"	4.11(a)
"Applicable Premium Deficit"	8.04(1)
"Asset Sale Offer"	4.10(d)
"Asset Sale Proceeds Application Period"	4.10(b)
"Authentication Order"	2.02
"Base Date"	4.07(a)(3)
"Change of Control Offer"	4.14(a)
"Change of Control Payment"	4.14(a)
"Change of Control Payment Date"	4.14(a)(2)
"Covenant Defeasance"	8.03
"Covenant Suspension Event"	4.16(a)
"Declined Excess Proceeds"	4.10(d)
"DTC"	2.03
"Event of Default"	6.01
"Excess Proceeds"	4.10(d)
"Foreign Disposition"	4.10(c)
"incur" and "incurrence"	4.09(a)
"Legal Defeasance"	8.02
"Limited Condition Transaction"	1.06(a)
"Note Register"	2.03
"Offer Amount"	3.09(b)
"Offer Period"	3.09(b)
"Parent Guaranteed Obligations"	10.07(a)
"Paying Agent"	2.03
"Purchase Date"	3.09(b)
"Qualified Reporting Subsidiary"	4.03(c)
"Redemption Date"	3.01
"Refunding Capital Stock"	4.07(b)(2)
"Registrar"	2.03
"Restricted Payments"	4.07(a)
"Reversion Date"	4.16(c)
"Successor Company"	5.01(a)(1)(a)
"Successor Parent Guarantor"	5.01(d)(1)
"Successor Person"	5.01(b)(1)(A)
"Suspended Covenants"	4.16(a)
"Suspension Date"	4.16(a)
"Suspension Period"	4.16(d)
"Tax Distributions"	4.07(b)(14)(b)(ii)
"Tax Group"	4.07(b)(14)(b)(i)
"Transaction Agreement Date"	1.06(a)
"Transfer Agent"	2.03
"Treasury Capital Stock"	4.07(b)(2)

SECTION 1.03. [Reserved].

SECTION 1.04. Rules of Construction. Unless the context otherwise requires:

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

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

(c) "or" is not exclusive;

(d) the words "including," "includes" and similar words shall be deemed to be followed by without limitation;

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

(f) "will" shall be interpreted to express a command;

(g) provisions apply to successive events and transactions;

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

(i) unless the context otherwise requires, any reference to an "Article," "Section" or "clause" refers to an Article, Section or clause, as the case may be, of this Indenture;

(j) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;

(k) the principal amount of any Preferred Stock at any time shall be (i) the maximum liquidation value of such Preferred Stock at such time or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock at such time, whichever is greater;

(l) words used herein implying any gender shall apply to both genders;

(m) "law" shall be construed as any law (including common or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, ordinance or any other legislative measure of any government, supranational, local government, statutory or regulatory body or court, in each case having the force of law;

(n) 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"; and

(o) the principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Issuer dated such date prepared in accordance with GAAP.

SECTION 1.05. Acts of Holders.

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

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

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

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

(e) Unless otherwise specified, if not set by the Issuer prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 10 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including DTC, that is a Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and any Person, that is a Holder of a Global Note, including DTC, may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such Depositary's standing instructions and customary practices.

(h) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by DTC entitled under the procedures of such Depositary to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders. If such a record date is fixed, the Holders on such record date or their duly appointed proxy or proxies, and only such Persons, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such Holders remain Holders after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be valid or effective if made, given or taken more than 120 days after such record date.

SECTION 1.06. Limited Condition Transactions; Measuring Compliance.

(a) With respect to any (x) Investment or acquisition, in each case, for which the Issuer or any Subsidiary of the Issuer whose consummation is not conditioned on the availability of, or on obtaining, third-party financing for such Investment or acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise) as applicable and (y) redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness, Disqualified Stock or Preferred Stock requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment (any transaction described in clauses (x) or (y), a "Limited Condition Transaction"), in each case for purposes of determining:

(1) whether any Indebtedness (including Acquired Indebtedness), Disqualified Stock or Preferred Stock that is being incurred or issued in connection with such Limited Condition Transaction is permitted to be incurred in compliance with Section 4.09;

(2) whether any Lien being incurred in connection with such Limited Condition Transaction or to secure any such Indebtedness, Disqualified Stock or Preferred Stock is permitted to be incurred in accordance with Section 4.12 or the definition of "Permitted Liens";

(3) whether any other transaction undertaken or proposed to be undertaken in connection with such Limited Condition Transaction complies with the covenants or agreements contained in this Indenture or the Notes; and

(4) any calculation of the Fixed Charge Coverage Ratio, Total Net Leverage Ratio, Senior Secured Net Leverage Ratio, Net Income, Consolidated Net Income, and/or Consolidated EBITDA and, whether a Default or Event of Default exists in connection with the foregoing,

at the option of the Issuer, the date that the definitive agreement (or other relevant definitive documentation) for such Limited Condition Transaction is entered into (the "Transaction Agreement Date") may be used as the applicable date of determination, as the case may be, in each case with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of "Fixed Charge Coverage Ratio" or "Consolidated EBITDA" and if the Issuer or the Restricted Subsidiaries could have taken such action on the relevant Transaction Agreement Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with; *provided*, *however,* that the Issuer shall be entitled to subsequently elect, in its sole discretion, the date of consummation of such Limited Condition Transaction instead of the Transaction Agreement Date as the applicable date of determination. For the avoidance of doubt, if the Issuer elects to use the Transaction Agreement Date as the applicable date of determination in accordance with the foregoing, (a) any fluctuation or change in the Fixed Charge Coverage Ratio, Total Net Leverage Ratio, Senior Secured Net Leverage Ratio, Net Income, Consolidated Net Income or Consolidated EBITDA of the Issuer, the target business, or assets to be acquired subsequent to the Transaction Agreement Date and prior to the consummation of such Limited Condition Transaction, will not be taken into account for purposes of determining whether any Indebtedness, Disqualified Stock, Preferred Stock or Lien that is being incurred or issued in connection with such Limited Condition Transaction is permitted to be incurred or issued or in connection with compliance by the Issuer or any of the Restricted Subsidiaries with any other provision of this Indenture or the Notes or any other action or transaction undertaken in connection with such Limited Condition Transaction and (b) until such Limited Condition Transaction is consummated or such definitive agreements are terminated or the Issuer makes an election pursuant to the proviso to the immediately preceding sentence, such Limited Condition Transaction and all transactions proposed to be undertaken in connection therewith (including the incurrence of Indebtedness and Liens) will be given *pro forma* effect when determining compliance of other transactions (including the incurrence or issuance of Indebtedness, Disqualified Stock, Preferred Stock and Liens unrelated to such Limited Condition Transaction) that are consummated after the Transaction Agreement Date and on or prior to the consummation of such Limited Condition Transaction and any such transactions (including any incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof) will be deemed to have occurred on the Transaction Agreement Date and outstanding thereafter for purposes of calculating any baskets or ratios under this Indenture after the date of such agreement and before the consummation of such Limited Condition Transaction; *provided* that for purposes of any such calculation of the Fixed Charge Coverage Ratio, Consolidated Interest Expense will be calculated using an assumed interest rate for the Indebtedness to be incurred in connection with such Limited Condition Transaction based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Issuer in good faith.

Notwithstanding anything herein to the contrary, if the Issuer or its Restricted Subsidiaries (x) incurs Indebtedness, issues Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, makes Investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with any Limited Condition Transaction under a ratio-based basket and (y) incurs Indebtedness, issues Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, Investments or Restricted Payments, designates any as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with any of Limited Condition Transaction under a non-ratio-based basket (which shall occur within five (5) Business Days of the events in clause (x) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based basket without regard to any such action under such non-ratio-based basket made in connection with such Limited Condition Transaction.

In addition, compliance with any requirement relating to absence of Default or Event of Default may be determined as of the Transaction Agreement Date and not as of any later date as would otherwise be required under this Indenture.

ARTICLE II

THE NOTES

SECTION 2.01. Form and Dating; Terms.

(a) General. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be issued initially in minimum denominations of $2,000 and any integral multiple of $1,000 in excess of $2,000.

(b) Global Notes. Notes issued in global form shall be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Temporary Global Notes. Notes offered and sold in reliance on Regulation S shall be issued initially in the form of the Regulation S Temporary Global Note, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Custodian and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Issuers and authenticated by the Trustee as hereinafter provided.

Following (i) the termination of the applicable Restricted Period and (ii) the receipt by the Trustee of (A) a certification or other evidence in a form reasonably acceptable to the Issuers of non-United States beneficial ownership of 100% of the aggregate principal amount of each Regulation S Temporary Global Note (except to the extent of any beneficial owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who shall take delivery of a beneficial ownership interest in a 144A Global Note or an IAI Global Note bearing a Private Placement Legend), all as contemplated by Section 2.06(b) hereof) and (B) an Officer's Certificate from the Issuers, the Regulation S Temporary Global Note Legend shall be deemed removed from the Regulation S Temporary Global Note, following which temporary beneficial interests in the Regulation S Temporary Global Note shall automatically become beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of the Regulation S Permanent Global Note, the Trustee will cancel the Regulation S Temporary Global Note.

The aggregate principal amount of a Regulation S Temporary Global Note and a Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

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

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

The Notes shall be subject to repurchase by the Issuers pursuant to an Asset Sale Offer as provided in Section 4.10 or a Change of Control Offer as provided in Section 4.14. The Notes shall not be redeemable, other than as provided in Article III hereof.

Additional Notes ranking *pari passu* with the Initial Notes may be created and issued from time to time by the Issuers without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, redemption or otherwise as the Initial Notes except that interest may accrue on the Additional Notes from their date of issuance (or such other date specified by the Issuers), subject to the Issuers' right to issue Additional Notes of a different series as set forth in the next paragraph; *provided* that the Issuers' ability to issue Additional Notes shall be subject to the Issuers' compliance with Section 4.09 and that a separate CUSIP or ISIN will be issued for Additional Notes, unless the Initial Notes and the Additional Notes are treated as fungible for U.S. federal income tax purposes, with the Initial Notes or any other Additional Notes bearing the same CUSIP or ISIN. Any Additional Notes shall be issued with the benefit of an indenture supplemental to this Indenture.

The Issuers may designate the maturity date, interest rate and optional redemption provisions applicable to each series of Additional Notes, which may differ from the maturity date, interest rate and optional redemption provisions applicable to the Initial Notes. Additional Notes that differ with respect to maturity date, interest rate or optional redemption provisions from the Initial Notes will constitute a different series of Notes from the Initial Notes. Additional Notes that have the same maturity date, interest rate and optional redemption provisions as the Initial Notes will be treated as the same series as the Initial Notes unless otherwise designated by the Issuers. The Issuers similarly may vary the application of related other provisions (including the issue price and any applicable original issue discount legend) to any series of Additional Notes.

(e) Euroclear and Clearstream Applicable Procedures. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Notes that are held by Participants through Euroclear or Clearstream and this Indenture shall not govern such transfers.

SECTION 2.02. Execution and Authentication.

At least one Officer of the Issuers shall execute the Notes on behalf of the Issuers by manual, facsimile or electronic (in ".pdf" format) signature.

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

A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A hereto, by the manual signature of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

On the Issue Date, the Trustee shall, upon receipt of an Issuers' Order (an "Authentication Order"), authenticate and deliver the Initial Notes in the aggregate principal amount or amounts specified in such Authentication Order. In addition, at any time, from time to time, the Trustee shall, upon receipt of an Authentication Order (together with such other documents as may be required pursuant to this Indenture), authenticate and deliver any Additional Notes for an aggregate principal amount specified in such Authentication Order for such Additional Notes issued or increased hereunder.

The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuers.

SECTION 2.03. Registrar, Transfer Agent and Paying Agent.

The Issuers shall maintain (i) an office or agency where Notes may be presented for registration ("Registrar"), (ii) an office or agency where Notes may be presented for transfer or for exchange ("Transfer Agent") and (iii) an office or agency where Notes may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Notes ("Note Register") and of their transfer and exchange. The registered Holder will be treated as the owner of the Note for all purposes. Only registered Holders will have rights under this Indenture and the Notes. The Issuers may appoint one or more co-registrars, one or more co-transfer agents and one or more additional paying agents. The term "Registrar" includes any co-registrar, the term "Transfer Agent" includes any co-transfer agent and the term "Paying Agent" includes any additional paying agents. The Issuers may change any Paying Agent, Transfer Agent or Registrar without prior notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fail to appoint or maintain another entity as Registrar, Transfer Agent or Paying Agent, the Trustee shall act as such. The Issuers or any of their Subsidiaries may act as Paying Agent, Transfer Agent or Registrar.

The Issuers initially appoint The Depository Trust Company ("DTC") to act as Depositary with respect to the Global Notes.

The Issuers initially appoint the Trustee to act as the Paying Agent, Transfer Agent and Registrar for the Notes and to act as Custodian with respect to the Global Notes.

If any Notes are listed on an exchange, for so long as the Notes are so listed and the rules of such exchange so require, the Issuers will satisfy any requirement of such exchange as to paying agents, registrars and transfer agents and will comply with any notice requirements required under such exchange in connection with any change of any paying agent, registrar or transfer agent.

SECTION 2.04. Paying Agent to Hold Money in Trust. The Issuers shall require each Paying Agent other than the Trustee to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee for its own benefit and for the benefit of the Holders. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee for its own benefit and for the benefit of the Holders. Upon payment over to the Trustee, the Paying Agent (if other than the Issuers or a Subsidiary or the Trustee) shall have no further liability for the money. If any of the Issuers or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to any of the Issuers, the Trustee shall serve as Paying Agent for the Notes.

SECTION 2.05. Holder Lists. The Registrar shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuers shall furnish to the Trustee at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders.

SECTION 2.06. Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. Except as otherwise set forth in this Section 2.06, a Global Note may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor thereto or a nominee of such successor thereto. A beneficial interest in a Global Note may not be exchanged for a Definitive Note of the same series unless:

(A) the Depositary (x) notifies the Issuers that it is unwilling or unable to continue as Depositary for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act, and, in either case, a successor Depositary is not appointed by the Issuers within 90 days; or

(B) upon the request of a Holder if there shall have occurred and be continuing an Event of Default with respect to the Notes.

Upon the occurrence of any of the events in clauses (A) or (B) above, Definitive Notes delivered in exchange for any Global Note of the same series or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depositary (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Section 2.07 and Section 2.10. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note of the same series or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or Section 2.10, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Definitive Notes issued subsequent to any of the events in (A) or (B) above and pursuant to Section 2.06(b)(ii)(B) and (c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a); *provided*, *however*, that beneficial interests in a Global Note may be transferred and exchanged as provided in Sections 2.06(b) or (c) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depositary in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided* that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person other than pursuant to Rule 144A or another available exemption from the registration requirements of the Securities Act. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(i) hereof, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(1) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note of the same series in an amount equal to the beneficial interest to be transferred or exchanged; and

(2) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above;

provided that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period therefor and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B). Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.

(iii) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of
Section 2.06(b)(ii) hereof and the Registrar receives the following:

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

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

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

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

(A) [Reserved];

(B) [Reserved];

(C) [Reserved];

(D) the Registrar receives the following:

(1) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note of the same series, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(2) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note of the same series, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

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

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

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

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

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

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

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

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

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

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable; or

(F) if such beneficial interest is being transferred to the Issuer or any of its Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof;

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

(ii) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Sections 2.06(c)(i)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

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

(A) [Reserved];

(B) [Reserved];

(C) [Reserved];

(D) the Registrar receives the following:

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

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

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

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

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

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

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

(B) if such Restricted Definitive Note is being transferred to a person reasonably believed to be a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

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

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

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

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

the Trustee shall cancel the Restricted Definitive Note and increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of clause (B) above, the applicable 144A Global Note, in the case of clause (C) above, the applicable Regulation S Global Note, in the case of clause (E) above, the IAI Global Note and in all other cases, the appropriate Unrestricted Global Note.

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

(A) [Reserved];

(B) [Reserved];

(C) [Reserved];

(D) the Registrar receives the following:

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

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

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

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

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

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

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance with this Section 2.06(e), the Registrar shall register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer or exchange in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing.

In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e):

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

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

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

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

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

(A) [Reserved];

(B) [Reserved];

(C) [Reserved];

(D) the Registrar receives the following:

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

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

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

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

(f) [Reserved].

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

(i) Private Placement Legend.

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO THE ISSUER, (2) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (3) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE),OR (5) TO AN INSTITUTIONAL INVESTOR THAT IS AN ACCREDITED INVESTOR WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND OTHER JURISDICTIONS. PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSES (2), (3), (4) OR (5) ABOVE, A DULY COMPLETED AND SIGNED CERTIFICATE (THE FORM OF WHICH MAY BE OBTAINED FROM THE TRUSTEE) MUST BE DELIVERED TO THE TRUSTEE AND THE ISSUER RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY RULE 144 EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

(ii) Global Note Legend. Each Global Note shall bear a legend in substantially the following form (with appropriate changes in the last sentence if DTC is not the Depositary):

THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06(h) OF THE INDENTURE, (II) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (III) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC") TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

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

THIS NOTE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT. BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.

(iv) OID Legend. Each Note that has more than a *de minimis* amount of original issue discount for U.S. federal income tax purposes shall bear a legend in substantially the following form:

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST (ADDRESSED TO [NAME/TITLE] AT [ADDRESS OR PHONE NUMBER]), THE ISSUERS WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND ISSUE DATE OF THE NOTE; (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE; AND (3) THE YIELD TO MATURITY OF THE NOTE.

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

(i) General Provisions Relating to Transfers and Exchanges.

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

(ii) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuers shall require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.07, 2.10, 3.06, 3.09, 4.10, 4.14 and 9.05 hereof).

(iii) Neither the Issuers nor the Registrar shall be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the mailing of a notice of redemption of the Notes to be redeemed under Section 3.03 hereof and ending at the close of business on the day of such mailing, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part, (C) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date or (D) to register the transfer of or to exchange any Notes tendered (and not withdrawn) for repurchase in connection with a Change of Control Offer or an Asset Sale Offer.

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

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

(vi) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuers shall deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuers shall be affected by notice to the contrary.

(vii) Upon surrender for registration of transfer of any Note at the office or agency of the Issuers designated pursuant to Section 4.02 hereof, the Issuers shall execute, and the Trustee shall authenticate and mail, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(viii) At the option of the Holder, subject to Section 2.06(a) hereof, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuers shall execute, and the Trustee shall authenticate and mail, the replacement Global Notes and Definitive Notes to which the Holder making the exchange is entitled in accordance with Section 2.02.

(ix) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary Participants or beneficial owners of interests in any Global Notes) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(x) Neither the Trustee nor any Agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

SECTION 2.07. Replacement Notes. If either (x) any mutilated Note is surrendered to the Trustee, the Registrar or the Issuers or (y) if the Issuers and the Trustee receive evidence to their satisfaction of the ownership and destruction, loss or theft of any Note, then the Issuers shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note. An indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee to protect the Trustee and the Issuers to protect the Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuers and the Trustee shall charge the Holder for their expenses in replacing a Note.

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

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

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

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

SECTION 2.09. Treasury Notes. In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuers or a Guarantor or by any Affiliate of the Issuers or a Guarantor shall be considered as though not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to such pledged Notes and that the pledgee is not the Issuers or a Guarantor or any Affiliate of the Issuers or a Guarantor.

SECTION 2.10. Temporary Notes. Until certificates representing Notes are ready for delivery, the Issuers may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Issuers consider appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuers shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes.

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

SECTION 2.11. Cancellation. The Issuers at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of such cancelled Notes in accordance with its customary procedures (subject to the record retention requirement of the Exchange Act). Certification of the cancellation of all surrendered Notes shall be delivered to the Issuers at the Issuers' written request. The Issuers may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

SECTION 2.12. Defaulted Interest. If the Issuers default in a payment of interest on the Notes, they shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuers may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. The Issuers shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuers shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed any such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee shall promptly notify the Issuers of any such special record date. At least 15 days before any such special record date, the Issuers (or, upon the written request of the Issuers, the Trustee in the name and at the expense of the Issuers) shall mail or cause to be mailed, first-class postage prepaid, or otherwise deliver in accordance with the Applicable Procedures, to each Holder, with a copy to the Trustee, a notice at his or her address as it appears in the Note Register that states the special record date, the related payment date and the amount of such interest to be paid.

Subject to this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 2.13. CUSIP/ISIN Numbers. The Issuers in issuing the Notes may use CUSIP and ISIN numbers (in each case, if then generally in use) and, if so, the Trustee shall use CUSIP and ISIN numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuers will as promptly as practicable notify the Trustee in writing of any change in the CUSIP and ISIN numbers.

ARTICLE III

REDEMPTION

SECTION 3.01. Notices to Trustee. If the Issuers elect to redeem the Notes pursuant to Section 3.07 hereof, they shall furnish to the Trustee, at least five Business Days (unless the Trustee agrees to a shorter period) before notice of redemption is required to be delivered to Holders pursuant to Section 3.03 hereof, an Officer's Certificate setting forth (i) the paragraph or subparagraph of such Note and/or Section of this Indenture pursuant to which the redemption shall occur, (ii) the date of redemption, which will be selected by the Issuers in their discretion, subject to any limitations set forth herein (the "Redemption Date"), (iii) the principal amount of the Notes to be redeemed and (iv) the redemption price.

SECTION 3.02. Selection of Notes to Be Redeemed.

If less than all of the Notes are to be redeemed or purchased at any time, the Trustee shall, upon prior written request of the Issuers, select the Notes to be redeemed or purchased (a) if the Notes are listed on an exchange, in compliance with the requirements of such exchange or (b) if the Notes are not listed on an exchange, on a *pro rata* basis to the extent practicable, or, if a *pro rata* basis is not practicable for any reason, by lot or by such other method as the Trustee deems fair and appropriate, and in any case in accordance with the Applicable Procedures to the extent applicable. In the event of partial redemption by lot, the particular Notes to be redeemed shall be selected, unless otherwise provided herein, not less than 10 nor more than 60 days prior to the Redemption Date by the Trustee from the outstanding Notes not previously called for redemption.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. No Notes of $2,000 or less can be redeemed or purchased in part, except that if all of the Notes of a Holder are to be redeemed, the entire outstanding amount of Notes held by such Holder shall be redeemed. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

SECTION 3.03. Notice of Redemption. The Issuers shall deliver electronically, mail or cause to be mailed by first-class mail, postage prepaid, notices of redemption at least 10 but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at such Holder's registered address or otherwise in accordance with Applicable Procedures, except that redemption notices may be delivered or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with Section 3.03(i), Article VIII or Article XI hereof.

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

(a) the Redemption Date;

(b) the redemption price;

(c) if any Definitive Note is to be redeemed in part only, the portion of the principal amount of that Note that is to be redeemed and that, upon request, after the Redemption Date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion of the original Note representing the same indebtedness to the extent not redeemed will be issued in the name of the Holder upon cancellation of the original Note;

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

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

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

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

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

(i) if such redemption is subject to satisfaction of one or more conditions precedent, a description of such conditions and, if applicable, will state that, in the Issuers' discretion, the Redemption Date may be delayed until such time (including more than 60 days after the date the redemption notice was mailed or delivered, including by electronic transmission) as any or all such conditions are satisfied (or waived by the Issuers in their sole discretion), or that such redemption may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Issuers in their sole discretion) by the Redemption Date, or by the Redemption Date so delayed, or such notice may be rescinded at any time in the Issuers' discretion if in the good faith judgment of the Issuers any or all of such conditions will not be satisfied.

At the Issuers' request, the Trustee shall give the notice of redemption in the Issuers' name and at their expense; *provided* that the Issuers shall have delivered to the Trustee the Officer's Certificate as set forth in Section 3.01.

The Issuers may redeem Notes pursuant to one or more of the Sections of this Indenture, and a single redemption notice may be delivered with respect to redemptions made pursuant to different Sections. Any such notice may provide that redemptions made pursuant to different Sections will have different Redemption Dates.

The Issuers may provide in such notice that payment of the redemption price and performance of the Issuers' obligations with respect to such redemption may be performed by another Person. If any Notes are listed on an exchange, and the rules of the exchange so require, the Issuers will notify the exchange of any such redemption and the principal amount of any Notes outstanding following any partial redemption of such Notes. In no event will the Trustee be responsible for monitoring, or charged with knowledge of, the maximum aggregate amount of Notes eligible hereunder to be redeemed. Notes will remain outstanding until redeemed, notwithstanding that they have been called for redemption or are subject to a notice of redemption.

SECTION 3.04. Effect of Notice of Redemption.

Once notice of redemption is delivered in accordance with Section 3.03 hereof, subject to satisfaction of any conditions precedent relating thereto specified in the applicable notice of redemption, Notes called for redemption become irrevocably due and payable on the Redemption Date at the redemption price, except as set forth in Section 3.03(i). The notice, if delivered, mailed or caused to be mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to deliver such notice or any defect in the notice to the Holder of any Note designated for redemption in whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05 hereof, on and after the Redemption Date or the date of purchase, interest shall cease to accrue on Notes or portions of Notes called for redemption or purchase.

SECTION 3.05. Deposit of Redemption Price.

(a) Prior to 11:00 a.m. (New York City time) on the Redemption Date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption price of and accrued and unpaid interest on all Notes to be redeemed on that Redemption Date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest on, all Notes to be redeemed.

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

SECTION 3.06. Notes Redeemed in Part. Upon surrender of a Definitive Note that is redeemed in part, upon request the Issuer shall issue and the Trustee shall authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed portion of the Note surrendered representing the same indebtedness to the extent not redeemed; *provided* that each new Note will be in a principal amount of $2,000 and any integral multiple of $1,000 in excess of $2,000. It is understood that, notwithstanding anything in this Indenture to the contrary, only an Authentication Order and not an Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate such new Note**.**

SECTION 3.07. Optional Redemption.

(a) At any time prior to September 15, 2023, the Issuers may at their option on one or more occasions redeem all or a part of the Notes, upon notice as described under Section 3.03 hereof at a redemption price (as calculated by the Issuers) equal to the sum of (i) 100.00% of the principal amount of the Notes redeemed, *plus* (ii) the Applicable Premium, *plus* (iii) accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date occurring prior to the Redemption Date.

(b) At any time prior to September 15, 2023, the Issuers may, at their option and on one or more occasions, redeem up to 40.00% of the aggregate principal amount of Notes and Additional Notes issued under this Indenture at a redemption price (as calculated by the Issuers) equal to the sum of (i) 106.625% of the aggregate principal amount thereof, with an amount equal to or less than the net cash proceeds from one or more Equity Offerings to the extent such net cash proceeds are received by or contributed to the Issuer, *plus* (ii) accrued and unpaid interest thereon, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date occurring prior to the Redemption Date; *provided* that (a) at least 50.00 % of the sum of the aggregate principal amount of Notes originally issued under this Indenture on the Issue Date and any Additional Notes issued under this Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption and (b) each such redemption occurs within 180 days of the date of closing of the applicable Equity Offering or contribution.

(c) At any time prior to September 15, 2023, the Issuers may at their option on one or more occasions redeem up to 10.00% of the original aggregate principal amount of the Notes issued under this Indenture during each twelve-month period commencing with the Issue Date at a redemption price (as calculated by the Issuers) equal to 103.00% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date occurring prior to the Redemption Date.

(d) In connection with any Change of Control Offer or other tender offer to purchase all of the Notes, if Holders of not less than 90.00% of the aggregate principal amount of the then outstanding Notes validly tender and do not validly withdraw such Notes in such Change of Control Offer or other tender offer and the Issuers purchase, or any third party making such Change of Control Offer or other tender offer in lieu of the Issuers purchases, all of the Notes validly tendered and not validly withdrawn by such Holders, all of the Holders will be deemed to have consented to such tender offer and accordingly, the Issuers or such third party will have the right upon notice, given not more than 60 days following such purchase date, to redeem all Notes that remain outstanding following such purchase at a price equal to the price offered to each other Holder in such Change of Control Offer or other tender offer, *plus*, to the extent not included in the Change of Control Offer or other tender offer payment, accrued and unpaid interest, if any, thereon, to, but excluding, the Redemption Date, subject to the right of the Holders of record on the relevant Record Date to receive interest due on an Interest Payment Date occurring on or prior to the Redemption Date.

(e) Except pursuant to clauses (a), (b), (c) or (d) of this Section 3.07, the Notes will not be redeemable at the Issuers' option prior to September 15, 2023.

(f) On and after September 15, 2023, the Issuers may at their option redeem the Notes, in whole or in part, on one or more occasions, upon notice in accordance with Section 3.03 hereof, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, *plus* accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date occurring prior to the Redemption Date, if redeemed during the twelve-month period beginning on September 15 in each of the years indicated below:

Year	**Percentage**
2023	103.313%
2024	101.656%
2025 and thereafter	100.000%

(g) Any redemption pursuant to this Section 3.07 shall be made pursuant to Sections 3.01 through 3.06.

(h) In addition to any redemption pursuant to this Section 3.07, the Issuers or their Affiliates may at any time and from time to time acquire Notes by means other than a redemption, whether by tender offer, in the open market, negotiated transaction or otherwise.

(i) Any notice of redemption made in connection with a related transaction or event (including an Equity Offering, contribution, Change of Control, Asset Sale or other transaction) may, at the Issuers' discretion, be given prior to the completion or the occurrence thereof, and any such redemption or notice may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, the completion or occurrence of the related transaction or event, as the case may be.

SECTION 3.08. Mandatory Redemption. The Issuers will not be required to make any mandatory redemption or sinking fund payments with respect to the Notes.

SECTION 3.09. Offers to Repurchase by Application of Excess Proceeds.

(a) In the event that, pursuant to Section 4.10 hereof, the Issuers shall be required to commence an Asset Sale Offer, they shall follow the procedures specified below.

(b) The Asset Sale Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than five Business Days after the termination of the Offer Period (the "Purchase Date"), the Issuers shall apply all Excess Proceeds (the "Offer Amount") to the purchase of Notes and, if required, Pari Passu Indebtedness (on a *pro rata* basis, if applicable), or, if less than the Offer Amount has been tendered, all Notes and Pari Passu Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

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

(d) Upon the commencement of an Asset Sale Offer, the Issuers shall deliver electronically or send, by first-class mail, postage prepaid, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The Asset Sale Offer shall be made to all Holders and holders of such Pari Passu Indebtedness. The notice, which shall govern the terms of the Asset Sale Offer, shall state:

(i) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer shall remain open;

(ii) the Offer Amount, the purchase price and the Purchase Date;

(iii) that any Note not tendered or accepted for payment shall continue to accrue interest;

(iv) that, unless the Issuers default in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest on and after the Purchase Date;

(v) that any Holder electing to have less than all of the aggregate principal amount of its Notes purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in an amount not less than $2,000 and integral multiples of $1,000 in excess thereof;

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

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

(viii) that, if the aggregate principal amount (or accreted value, as applicable) of Notes and/or the Pari Passu Indebtedness surrendered by the holders thereof exceeds the Offer Amount, the Trustee will select the Notes to be purchased in accordance with Section 3.02 and the Issuer will select such Pari Passu Indebtedness to be purchased pursuant to the terms of such Pari Passu Indebtedness; *provided* that as between the Notes and any Pari Passu Indebtedness, such purchases will be made on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered with adjustments as necessary so that no Notes or Pari Passu Indebtedness will be repurchased in part in an unauthorized denomination; and

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

(e) On or before the Purchase Date, the Issuers shall, to the extent lawful, (1) accept for payment, on a *pro rata* basis as described in clause (d)(viii) of this Section 3.09, the Offer Amount of Notes or portions thereof validly tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered and (2) deliver or cause to be delivered to the Trustee the Notes properly accepted, together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof so tendered and not validly withdrawn.

(f) The Issuers, the Depositary or the Paying Agent, as the case may be, shall promptly mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes properly tendered by such Holder and accepted by the Issuers for purchase, and the Issuers shall promptly issue a new Note, and the Trustee, upon receipt of an Authentication Order, shall authenticate and mail or deliver (or cause to be transferred by book-entry) such new Note to such Holder (it being understood that, notwithstanding anything in this Indenture to the contrary, no Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate and mail or deliver such new Note) in a principal amount equal to any unpurchased portion of the Note surrendered representing the same indebtedness to the extent not repurchased. Any Note not so accepted shall be promptly mailed or delivered by the Issuers to the Holder thereof. The Issuers shall publicly announce the results of the Asset Sale Offer on or as soon as practicable after the Purchase Date.

(g) Prior to 11:00 a.m. (New York City time) on the Purchase Date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the purchase price of and accrued and unpaid interest on all Notes to be purchased on that Purchase Date. The Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the purchase price of, and accrued and unpaid interest on, all Notes to be redeemed.

Other than as specifically provided in this Section 3.09 or Section 4.10 hereof, any purchase pursuant to this Section 3.09 shall be made pursuant to the applicable provisions of Sections 3.01 through 3.06 hereof, and references therein to "redeem," "redemption," "Redemption Date" and similar words shall be deemed to refer to "purchase," "repurchase," "Purchase Date" and similar words, as applicable.

ARTICLE IV

COVENANTS

SECTION 4.01. Payment of Notes.

The Issuers shall pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates and in the manner provided in the Notes and this Indenture. Principal, premium, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuer or the Co-Issuer or a Guarantor or an Affiliate of the Issuer or the Co-Issuer or a Guarantor, holds as of 11:00 a.m. (New York City time) on the due date money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

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

SECTION 4.02. Maintenance of Office or Agency. The Issuers shall maintain the offices or agencies (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or Transfer Agent) required under Section 2.03 hereof where Notes may be surrendered for registration of transfer or for exchange or presented for payment and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be made. The Issuers shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made at the Corporate Trust Office of the Trustee.

The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Issuers of its obligation to maintain such offices or agencies as required by Section 2.03 hereof for such purposes. The Issuers shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuers hereby designate the Corporate Trust Office of the Trustee as one such office or agency of the Issuers in accordance with Section 2.03 hereof; *provided* the Corporate Trust Office of the Trustee shall not be an office or agency of the Issuers for the purpose of effecting service of legal process on the Issuers.

SECTION 4.03. Reports and Other Information.

(a) So long as any Notes are outstanding, the Issuer will furnish to the Holders:

(1) within 120 days after the end of the initial fiscal year of the Issuer ending after the Issue Date, then within 90 days after the end of each subsequent fiscal year of the Issuer, all annual financial statements of the Issuer substantially in the form that would be required to be contained in a filing with the SEC on Form 10-K (but only to the extent similar information was included in the Offering Circular), in accordance with the requirements of such Form 10-K as of the Issue Date, if the Issuer were required to file such form, together with a report thereon by the Issuer's independent registered public accounting firm, and a "Management's Discussion and Analysis of Financial Condition and Results of Operations;"

(2) within 45 days after the end of each fiscal quarter of the Issuer ending after the Issue Date, all quarterly financial statements of the Issuer substantially in the form that would be required to be contained in a filing with the SEC on Form 10-Q (but only to the extent similar information was included in the Offering Circular), in accordance with the requirements of such Form 10-Q as of the Issue Date (solely with respect to the first three fiscal quarters of each fiscal year), if the Issuer were required to file such form, and a "Management's Discussion and Analysis of Financial Condition and Results of Operations;" and

(3) promptly from time to time after the occurrence of an event required to be therein reported, such other information containing substantially the same information that would be required to be contained in filings with the SEC on Form 8-K, in accordance with the requirements of such Form 8-K as of the Issue Date, under Items: 1.03 (*Bankruptcy or Receivership*); 2.01 (*Completion of Acquisition or Disposition of Assets*); 2.03 (*Creation of a Direct Financial Obligation or an Obligations under an Off-Balance Sheet Arrangement*); 2.04 (*Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement*); 4.02 (*Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review*); 5.01 (*Changes in Control of Registrant*); 5.02(a)(1) (*Resignation of Director due to Disagreement with Registrant*); 5.02(c)(1) (*Name and Position of Newly Appointed Officer and Date of Appointment*); and 5.03(b) (*Changes in Fiscal Year*), if the Issuer were required to file such reports;

provided, however,

(i) no such reports referenced under clause (3) above will be required to include as an exhibit or summary of terms of, any employment or compensatory arrangement agreement, plan or understanding between the Issuer (or any of its Subsidiaries or any Parent Company) and any director, manager or executive officer, of the Issuer (or any of its Subsidiaries or any Parent Company);

(ii) in no event will such reports be required to comply with Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC;

(iii) in no event will such reports be required to comply with Item 302 of Regulation S-K promulgated by the SEC;

(iv) in no event will such reports be required to comply with Rule 3-10 of Regulation S-X promulgated by the SEC or contain separate financial statements for the Issuer, the Co-Issuer, the Guarantors or other Subsidiaries the shares of which may be pledged to secure the Notes or any Guarantee that would be required under (x) Section 3-09 of Regulation S-X or (y) Section 3-16 of Regulation S-X, respectively, promulgated by the SEC (except for customary qualitative capsule financial statements and financial information);

(v) in no event will such reports be required to comply with Regulation G under the Exchange Act or Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-GAAP financial measures contained therein;

(vi) no such reports referenced under clause (3) above will be required to be furnished if the Issuer determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations or financial position of the Issuer and its Restricted Subsidiaries, taken as a whole;

(vii) in no event will such reports be required to comply with Item 601 of Regulation S-K promulgated by the SEC (with respect to exhibits) or, with respect to reports referenced in clause (3) above, to include as an exhibit copies of any agreements, financial statements or other items that would be required to be filed as exhibits to a current report on Form 8-K, except for agreements evidencing material Indebtedness (excluding any schedules thereto);

(viii) trade secrets and other confidential information that is competitively sensitive in the good faith and reasonable determination of the Issuer may be excluded from any disclosures; and

(ix) such information will not be required to contain any "segment reporting."

(b) The Issuer may satisfy its obligations in this Section 4.03 with respect to financial information relating to the Issuer by furnishing financial information relating to any Parent Company; *provided* that if and so long as such Parent Company has Independent Assets or Operations, the same is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Company, on the one hand, and the information relating to the Issuer and its Restricted Subsidiaries on a stand-alone basis, on the other hand.

(c) In addition, notwithstanding the foregoing, the financial statements, information, auditors' reports and other documents and information required to be provided pursuant to Section 4.03(a) may be, rather than those of the Issuer, those of (1) any predecessor or successor of the Issuer, (2) any Wholly-Owned Restricted Subsidiary of the Issuer that, together with its consolidated Subsidiaries, constitutes substantially all of the assets of the Issuer and its consolidated Subsidiaries ("Qualified Reporting Subsidiary") or (3) any direct or indirect parent of the Issuer; *provided* that, if the financial information required to be provided pursuant to Section 4.03(a) relates to such Qualified Reporting Subsidiary of the Issuer or such Parent Company, such financial information will be accompanied by consolidating information (which need not be audited), that explains in reasonable detail (in the good faith judgment of the Issuer) the differences between the information relating to such Qualified Reporting Subsidiary or such Parent Company (as the case may be), on the one hand, and the information relating to the Issuer and its Subsidiaries on a stand-alone basis, on the other hand.

(d) Notwithstanding anything herein to the contrary, the Issuer will not be deemed to have failed to comply with any of its obligations under this Section 4.03 for purposes of Section 6.01(3) hereof until 45 days after the date any report is due under this Section 4.03.

(e) The Issuer will make available such information and such reports to any Holder and, upon request, to any beneficial owner of the Notes, in each case by posting such information on its website, on Intralinks, SyndTrak, ClearPar or any comparable password-protected online data system that will require a confidentiality acknowledgment, and will make such information readily available to any Holder, any bona fide prospective investor in the Notes, any bona fide securities analyst (to the extent providing analysis of investment in the Notes to investors and prospective investors therein) or any bona fide market maker in the Notes who agrees to treat such information as confidential or accesses such information on Intralinks, SyndTrak, ClearPar or any comparable password-protected online data system that will require a confidentiality acknowledgment; *provided* that the Issuer may deny access to any competitively-sensitive information otherwise to be provided pursuant to this covenant to any such Holder, prospective investor, security analyst or market maker that is a competitor of the Issuer and its Subsidiaries, or an affiliate of such a competitor (other than any affiliate that is a bona fide bank debt fund, distressed asset fund, hedge fund, mutual fund, insurance company, financial institution or investment vehicle engaged in the business of investing in, acquiring or trading commercial loans, bonds and similar extensions of credit in the ordinary course (and not organized primarily for the purpose of making equity investments)) to the extent that the Issuer determines in good faith that the provision of such information to such Person would be competitively harmful to the Issuer and its Subsidiaries; and *provided*, *further* that such Holders, prospective investors, security analysts or market makers will agree to (1) treat all such reports (and the information contained therein) and information as confidential, (2) not use such reports and the information contained therein for any purpose other than their investment or potential investment in the Notes and (3) not publicly disclose or distribute any such reports (and the information contained therein).

(f) In addition, to the extent not satisfied by the reports required under this Section 4.03 or otherwise made publicly-available by the Issuer, the Issuer will furnish to Holders thereof and prospective investors in the Notes, upon their request, the information, if any, required to be delivered pursuant to Rule 144A(d)(4) (or any successor provision) under the Securities Act.

(g) The Issuer will be deemed to have furnished the reports in Sections 4.03(a) if the Issuer or any Parent Company has filed reports containing such information with the SEC.

(h) To the extent any information is not provided within the time periods specified in this Section 4.03 and such information is subsequently provided, the Issuer will be deemed to have satisfied its obligations with respect thereto at such time and any Default with respect thereto will be deemed to have been cured.

(i) The Issuer shall use its commercially reasonable efforts to participate in quarterly conference calls after the delivery of the information referred to in Section 4.03(a) above (which may be a single conference call together with investors and lenders holding other securities or Indebtedness of the Issuer and/or its Restricted Subsidiaries and/or any Parent Company of the Issuer) to discuss operating results and related matters. The Issuer shall issue a press release which will provide the date and time of any such call and will direct Holders, prospective investors and securities analysts to contact the investor relations office of the Issuer to obtain access to the conference call.

(j) It is understood that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been posted on the Issuer's website or filed with the SEC. The posting or delivery of any such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers' compliance with any of the covenants under this Indenture (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

SECTION 4.04. Compliance Certificate.

(a) The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year ending after the Issue Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Issuer and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Issuer has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Issuer has kept, observed, performed and fulfilled each and every condition and covenant contained in this Indenture during such fiscal year and is not in Default in the performance or observance of any of the terms, provisions, covenants and conditions of this Indenture (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action the Issuer is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Indenture, the Issuer shall promptly (which shall be no more than thirty (30) days after becoming aware of such Default) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer's Certificate specifying such Default, its status and what actions the Issuers propose to take with respect thereto.

SECTION 4.05. Taxes. The Issuer shall pay or discharge, and shall cause each of its Restricted Subsidiaries to pay or discharge, prior to delinquency, all material taxes, lawful assessments, and governmental levies except such as are contested in good faith and by appropriate actions or where the failure to effect such payment or discharge is not adverse in any material respect to the Holders.

SECTION 4.06. Stay, Extension and Usury Laws. The Issuer, the Co-Issuer and each of the Guarantors covenant (to the extent that they may lawfully do so) that they shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer, the Co-Issuer and each of the Guarantors (to the extent that they may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and covenant (to the extent that they may lawfully do so) that they shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

SECTION 4.07. Limitation on Restricted Payments.

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

(I) declare or pay any dividend or make any payment or distribution on account of the Issuer's or any Restricted Subsidiary's Equity Interests to any Person other than the Issuer or any Restricted Subsidiary of the Issuer (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(A) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Issuer or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(B) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Issuer or a Restricted Subsidiary receives at least its *pro rata* share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Issuer or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Issuer or a Restricted Subsidiary;

(III) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Subordinated Indebtedness, other than:

(A) Indebtedness permitted under Sections 4.09(b)(8), (9) and (10); or

(B) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or

(IV) make any Restricted Investment;

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

(1) no Default or Event of Default will have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to any such Restricted Payment made utilizing clause (3)(A) below on a *pro forma* basis, the Issuer could incur $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments (including the fair market value of any non-cash amount) made by the Issuer and its Restricted Subsidiaries after May 31, 2019 (the "Base Date") (excluding

Restricted Payments permitted by Section 4.07(b), other than Sections 4.07(b)(1), (8) and (14), is less than the sum of (without duplication):

(A) 50.00% of the Consolidated Net Income of the Issuer for the period (taken as one accounting period) beginning on the first fiscal quarter commencing after the Issue Date to the end of the most recently ended fiscal quarter for which internal financial statements are available (as determined in good faith by the Issuer) preceding such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, *minus* 100.00% of such deficit; *plus*

(B) 100.00% of the aggregate net cash proceeds and the fair market value of marketable securities or other property received by the Issuer and its Restricted Subsidiaries since the Base Date from the issue or sale of:

(i) (A) Equity Interests of the Issuer, including Treasury Capital Stock, but excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of:

(x) Equity Interests to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer, its Subsidiaries or any Parent Company after the Base Date to the extent the amount of such cash proceeds have been applied to Restricted Payments made in accordance with Section 4.07(b)(4); and

(y) Designated Preferred Stock; and

(B) Equity Interests of Parent Companies, to the extent the proceeds of any such issuance or consideration for any such sale are contributed to the Issuer (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with Section 4.07(b)(4)); or

(ii) Indebtedness of the Issuer or any Restricted Subsidiary, that has been converted into or exchanged for Equity Interests of the Issuer or any Parent Company;

provided that this clause (3)(B) will not include the proceeds from (V) Refunding Capital Stock (as defined below) applied in accordance with Section 4.07(b)(2), (W) Equity Interests or convertible debt securities of the Issuer sold to a Restricted Subsidiary, (X) Disqualified Stock or debt securities or Indebtedness that have been converted into Disqualified Stock, (Y) Excluded Contributions or (Z) Capex Equity; *plus*

(C) 100.00% of the aggregate amount of cash, Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Issuer (other than in the form of Disqualified Stock) following the Base Date (including the fair market value of any Indebtedness contributed to the Issuer or its Restricted Subsidiaries for cancellation) or that becomes part of the capital of the Issuer through consolidation, amalgamation or merger following the Base Date, in each case not involving cash consideration payable by the Issuer (other than (X) cash, Cash Equivalents and marketable securities or other property that are contributed by a Restricted Subsidiary, (Y) Excluded Contributions or (Z) Capex Equity); *plus*

(D) 100.00% of the aggregate amount received in cash and the fair market value of marketable securities or other property received by the Issuer or a Restricted Subsidiary by means of:

(i) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary) of, or other returns on Investments from, Restricted Investments made by the Issuer or its Restricted Subsidiaries (including cash distributions and cash interest received in respect of Restricted Investments) and repurchases and redemptions of such Restricted Investments from the Issuer or its Restricted Subsidiaries (other than by the Issuer or a Restricted Subsidiary) and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Issuer or its Restricted Subsidiaries, in each case after the Base Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof); or

(ii) the sale (other than to the Issuer or a Restricted Subsidiary) of Equity Interests of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but including such cash or fair market value to the extent exceeding the amount of such Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Base Date (excluding any Excluded Contributions made pursuant to clause (2) or (3) of the definition thereof); or

(iii) any cash returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a dollar-denominated or ratio-based basket (to the extent in excess of the original amount of such Investment and not included in Consolidated Net Income); *plus*

(E) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Issuer or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Issuer or a Restricted Subsidiary after the Base Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of cash or fair market value; *plus*

(F) 100.00% of the aggregate amount of Declined Excess Proceeds; *plus*

(G) the greater of (i) $10.0 million and (ii) 7.5% of the Consolidated EBITDA of the Issuer and its Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis).

(b) Section 4.07(a) will not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Indenture;

(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Issuer or any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("Treasury Capital Stock"), or (ii) Subordinated Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Issuer or any Parent Company (in the case of proceeds, to the extent any such proceeds therefrom are contributed to the Issuer) (in each case, other than Disqualified Stock) ("Refunding Capital Stock") and (y) within 120 days of such sale or issuance, (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any Restricted Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance, and (c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Issuer was permitted under Section 4.07(b)(6)(A) or (B), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount per annum no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of (a) Subordinated Indebtedness of the Issuer or the Co-Issuer or a Subsidiary Guarantor made (i) by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Subordinated Indebtedness of the Issuer or the Co-Issuer or a Subsidiary Guarantor or Disqualified Stock of the Issuer or the Co-Issuer or a Subsidiary Guarantor and (ii) within 120 days of such sale, issuance or incurrence, (b) Disqualified Stock of the Issuer or the Co-Issuer or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, Disqualified Stock or Subordinated Indebtedness of the Issuer or the Co-Issuer or a Subsidiary Guarantor, made within 120 days of such sale, issuance or incurrence, (c) Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made within 120 days of such sale or issuance that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 4.09 and (d) any Subordinated Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Issuer or any Parent Company held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Issuer or any Parent Company in connection with any such repurchase, retirement or other acquisition); *provided* that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $20.0 million in any calendar year (increasing to $40.0 million following an underwritten public Equity Offering by the Issuer or any Parent Company) with unused amounts in any calendar year being carried over to succeeding calendar years; *provided*, *further*, that such amount in any calendar year under this clause (4) may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Issuer and, to the extent contributed to the Issuer, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer, any of its Subsidiaries or any Parent Company, or pursuant to any Management Services Agreements, that occurs after the Base Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of Section 4.07(a)(3); *plus*

(B) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer, any of its Restricted Subsidiaries or pursuant to any Management Services Agreements that are foregone in exchange for the receipt of Equity Interests of the Issuer pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(C) the cash proceeds of life insurance policies received by the Issuer or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Issuer (other than in the form of Disqualified Stock)) after the Base Date; *minus*

(D) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A), (B) and (C) of this clause (4);

and *provided* that the Issuer may elect to apply all or any portion of the aggregate increase contemplated by Sections 4.07(b)(4)(A), (B) and (C) in any calendar year and *provided*, *further*, that cancellation of Indebtedness owing to the Issuer or any of its Restricted Subsidiaries from any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), of the Issuer, any Parent Company or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Issuer or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 4.07 or any other provision of this Indenture;

(5) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Issuer or any Restricted Subsidiary or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 4.09 to the extent such dividends or distributions are included in the definition of "Fixed Charges";

(6) (A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Issuer or any Restricted Subsidiary after the Base Date;

(B) the declaration and payment of dividends or distributions to any Parent Company, the proceeds of which will be used to fund the payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by such Parent Company after the Base Date; *provided* that the amount of dividends and distributions paid pursuant to this clause (B) will not exceed the aggregate amount of cash actually contributed to the Issuer from the sale of such Designated Preferred Stock; or

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to Section 4.07(b)(2);

provided that in the case of each of clauses (A), (B) and (C) of this clause (6), for the most recently ended Test Period preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Issuer would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(7) (a) payments made or expected to be made by the Issuer or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Issuer or any Restricted Subsidiary or any Parent Company, (b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and (c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Issuer or any Parent Company or any Restricted Subsidiary of the Issuer in connection with such Person's purchase of Equity Interests of the Issuer or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Issuer's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on a Parent Company's common equity), following the first public offering of the Issuer's common equity or the common equity of any Parent Company after the Issue Date, in an amount not to exceed the sum of (a) 6.00% per annum of the net cash proceeds received by or contributed to the Issuer in or from any such public offering, other than public offerings with respect to the Issuer's or such Parent Company's common equity registered on Form S-4 or Form S-8 and other than any public sale constituting an Excluded Contribution, or Capex Equity and (b) an aggregate amount per annum not to exceed 6.00% of Market Capitalization;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is made) the greater of (a) $15.0 million and (b) 10.0% of the Consolidated EBITDA of the Issuer and its Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis);

(11) distributions or payments of Securitization Fees;

(12) [Reserved];

(13) the repurchase, redemption, defeasance, acquisition or retirement for value of any Subordinated Indebtedness pursuant to the provisions similar to those of Sections 4.10 or 4.14; *provided* that (i) at or prior to such repurchase, redemption, defeasance, acquisition or retirement, the Issuers (or a third person permitted by this Indenture) have made any required Change of Control Offer or Asset Sale Offer, as applicable, to purchase the Notes on the terms provided in this Indenture applicable to Change of Control Offers or Asset Sale Offers, respectively, and (ii) all Notes validly tendered and not validly withdrawn by Holders in any such Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed, acquired or retired for value;

(14) the declaration and payment of dividends or distributions by the Issuer or a Restricted Subsidiary to, or the making of loans or advances to, the Issuer or any Parent Company in amounts required for any Parent Company to pay, in each case without duplication:

(a) franchise, excise and similar taxes, and other fees and expenses required to maintain their corporate or other legal existence;

(b) (i) for any taxable period (or portion thereof) for which the Issuer or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a "Tax Group"), the portion of any U.S. federal, foreign, state or local income taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Issuer and/or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries); *provided* that for each taxable period, (x) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Issuer and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group and (y) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Issuer or any Restricted Subsidiary for such purpose; or

(ii) for any taxable period (or portion thereof) for which the Issuer and any Parent Company is a partnership or disregarded entity for U.S. federal income tax purposes, cash distributions ("Tax Distributions") to each direct or indirect member of the Parent Company in accordance with the terms of its relevant operating agreement, in an aggregate amount not to exceed the product of (A) the taxable income of the Issuer allocable to such member for such period reduced by any taxable loss of the Issuer allocated to such member with respect to any prior taxable periods (or portions thereof) ending after the Issue Date (provided that any such taxable loss will be taken into account only to the extent that (I) such taxable loss was not previously taken into account in determining the amount of any Tax Distributions pursuant to this clause (b)(ii), (II) such taxable loss would be deductible if such loss had been incurred in the current taxable period, and (III) such taxable loss would actually reduce the tax liability of such member for such taxable period, taking into account any alternative minimum tax consequences as well as the character of the taxable loss and of the Issuer's and its Subsidiaries' income, and assuming for the purposes of this subclause (III) that such member, for all tax years (or portions thereof) ending after the Issue Date, has been a taxable corporation that has held no assets other than such member's direct or indirect interest in the Issuer or Parent Company), in each case, determined by taking into account any basis step-up in the assets of the Issuer or any of its Subsidiaries (including any step-up attributable to such member under section 743 of the Code), and (B) the maximum combined effective tax rate applicable to any direct or indirect equity owner of the Issuer or Parent Company for such taxable period (taking into account the character of the taxable income in question (*e.g.* long-term capital gain, qualified dividend income, etc.) and the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitations thereon)); *provided* that the amount of any Tax Distribution permitted under this clause (b)(ii) shall be reduced by the amount of any income taxes that are paid directly by the Issuer and attributable to such member;

(c) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management, consultants and independent contractors of any Parent Company and any payroll, social security or similar taxes thereof, to the extent such items are reasonably attributable to the Issuer and its Restricted Subsidiaries;

(d) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company, to the extent such items are reasonably attributable to the Issuer and its Restricted Subsidiaries;

(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated) based on the portion of proceeds of such offering or transaction that are contributed to, or otherwise attributable to, the Issuer or its Restricted Subsidiaries;

(f) amounts that would be permitted to be paid directly by the Issuer or its Restricted Subsidiaries under Section 4.11 (other than clause (b)(2)(a) thereof); and

(g) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 4.07 if made by the Issuer; *provided* that (A) such Restricted Payment must be made within 120 days of the closing of such Investment, acquisition or investment, (B) such Parent Company must, promptly following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Issuer or one of its Restricted Subsidiaries or (2) the merger, amalgamation, consolidation, or sale of the Person formed or acquired into the Issuer or one of its Restricted Subsidiaries (to the extent not prohibited by Section 5.01) in order to consummate such Investment, acquisition or investment, (C) such Parent Company and its Affiliates (other than the Issuer or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Issuer or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Indenture, (D) any property received by the Issuer may not increase amounts available for Restricted Payments pursuant to Section 4.07(a)(3) and (E) to the extent constituting an Investment, such Investment will be deemed to be made by the Issuer or such Restricted Subsidiary pursuant to another provision of this Section 4.07 (other than pursuant to Section 4.07(b)(9)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);

(15) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Issuer or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents);

(16) cash payments or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Issuer, any of its Restricted Subsidiaries or any Parent Company;

(17) other Restricted Payments, *provided* that after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 3.00 to 1.00;

(18) payments made for the benefit of the Issuer or any of its Restricted Subsidiaries to the extent such payments could have been made by the Issuer or any of its Restricted Subsidiaries because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 4.11;

(19) payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Indenture or any other transaction that complies with the terms of this Indenture;

(20) the payment of dividends, other distributions and other amounts by the Issuer to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest and/or principal (including AHYDO "catch-up payments") on Indebtedness, the proceeds of which have been permanently contributed to the Issuer or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Issuer or any Restricted Subsidiary incurred in accordance with this Indenture; *provided* that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Issuer for the incurrence of such Indebtedness;

(21) the making of cash payments in connection with any conversion of Convertible Indebtedness of the Issuer, Co-Issuer or any Restricted Subsidiary in an aggregate amount since the Base Date not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Issuer, Co-Issuer or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(22) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Issuer's common equity upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common equity upon any early termination thereof; and

(23) the refinancing of any Subordinated Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness;*provided* that at the time of, and after giving effect to, any Restricted Payment permitted under Section 4.07(b)(6), (10) and (17), in respect of Restricted Payments described in clauses (I), (II) or (III) of Section 4.07(a), no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of Sections 4.07(b)(7) and (14), taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 4.07, in the event that any Restricted Payment or Investment (or a portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in Section 4.07(a) or 4.07(b) , but excluding 4.07(b)(23), and/or one or more of the clauses contained in the definition of "Permitted Investments", the Issuer will, in its sole discretion, be entitled to divide or classify (or later divide, classify or reclassify), in whole or in part, such Restricted Payment or Investment (or any portion thereof) among Section 4.07(a) and/or 4.07(b), but excluding 4.07(b)(23), and/or one or more clauses contained in the definition of "Permitted Investments," in a manner that otherwise complies with this Section 4.07. The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Issuer's election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Issuer or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

(d) As of the Issue Date, all of the Issuer's Subsidiaries will be Restricted Subsidiaries. The Issuer will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the penultimate sentence of the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Issuer and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments or Permitted Investments in an amount determined as set forth in the definition of "Investments." Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time pursuant to this Section 4.07 or if an Investment would be permitted at such time, pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in this Indenture. For the avoidance of doubt, this Section 4.07 will not restrict the making of any "AHYDO catch up payment" with respect to, and required by the terms of, any Indebtedness of the Issuer or any Restricted Subsidiary permitted to be incurred under the terms of this Indenture.

SECTION 4.08. Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

(a) The Issuer will not, and will not permit any Restricted Subsidiary that is not a Subsidiary Guarantor to, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(1) (A) pay dividends or make any other distributions to the Issuer or the Co-Issuer or any Restricted Subsidiary that is a Subsidiary Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(B) pay any Indebtedness owed to the Issuer or the Co-Issuer or to any Restricted Subsidiary that is a Subsidiary Guarantor;

(2) make loans or advances to the Issuer or the Co-Issuer or to any Restricted Subsidiary that is a Subsidiary Guarantor; or

(3) sell, lease or transfer any of its properties or assets to the Issuer or the Co-Issuer or to any Restricted Subsidiary that is a Subsidiary Guarantor;

provided that dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.

(b) The restrictions in Section 4.08(a) will not apply to encumbrances or restrictions existing under or by reason of:

(1) encumbrances or restrictions in effect on the Issue Date, including pursuant to the ABL Facility and the related documentation and Hedging Obligations and the related documentation;

(2) the 2020 Bond Financing Agreement, the Series 2020 Note, the guarantees thereof, the 2020 Bonds, the 2020 Bond Indenture, the 2019 Bond Financing Agreement, the Series 2019 Note, the guarantees thereof, the 2019 Bonds, the 2019 Bond Indenture, this Indenture, the Notes, the Guarantees thereof, and the Security Documents;

(3) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in Section 4.08(a)(3) on the property so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with or into the Issuer or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Issuer or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries or the property or assets so acquired or designated;

(6) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Issuer pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(7) Secured Indebtedness otherwise permitted to be incurred pursuant to Sections 4.09 and 4.12 that limit the right of the debtor to dispose of assets or incur Liens;

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Permitted Liens;

(9) provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Subsidiary Guarantors permitted to be incurred subsequent to the Issue Date pursuant to Section 4.09;

(10) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business;

(11) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to intellectual property and other agreements;

(12) restrictions created in connection with any Qualified Securitization Facility or Receivables Financing Transaction that, in the good faith determination of the Issuer, are necessary or advisable to effect such Qualified Securitization Facility or Receivables Financing Transaction;

(13) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Issuer or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Issuer or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Issuer or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(14) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Issuer or any Restricted Subsidiary;

(15) customary provisions restricting assignment of any agreement;

(16) restrictions arising in connection with cash or other deposits permitted under Section 4.12;

(17) any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 4.09 entered into after the Issue Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to the Issuer or any Restricted Subsidiary than (A) the restrictions contained in this Indenture, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement or the ABL Facility as of the Issue Date or (B) those encumbrances and other restrictions that are in effect on the Issue Date with respect to the Issuer or that Restricted Subsidiary pursuant to agreements in effect on the Issue Date, (ii) are not materially more disadvantageous, taken as a whole, to the Holders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Issuers' ability to make payments on the Notes when due, in each case in the good faith judgment of the Issuer;

(18) (i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 4.09(b)(5) and any permitted refinancing in respect thereof, and (ii) agreements entered into in connection with a Sale and Lease-Back Transaction entered into in the ordinary course of business or consistent with industry practice or a Specified Sale and Lease-Back Transaction;

(19) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 4.08;

(20) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; *provided* that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Issuer or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;

(21) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (20) of this Section 4.08(b); *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(22) any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Issuer, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(23) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 4.09 is incurred or issued; and

(24) restrictions on the sale, lease or transfer of property or assets arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Issuer or any Restricted Subsidiary in any manner material to the Issuer and the Restricted Subsidiaries, taken as a whole.

SECTION 4.09. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, create, incur, issue, assume, guarantee or otherwise become directly or indirectly, liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and the Issuer will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided* that the Issuer may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio of the Issuer for the Issuer's most recently ended Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period.

(b) Section 4.09(a) will not apply to:

(1) the incurrence of Indebtedness pursuant to Credit Facilities by the Issuer or any Restricted Subsidiary and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) in an aggregate principal amount not to exceed the greater of (a) the ABL Cap Amount and (b) the sum of (i) 75% of the book value (calculated in accordance with GAAP) of the inventory of the Issuer and any Restricted Subsidiaries (excluding LIFO reserves) and (ii) 90% of the book value of accounts receivable of the Issuer and any Restricted Subsidiaries (in each case, calculated on a pro forma basis by the book value set forth on the consolidated balance sheet of the Issuer for the most recently ended Test Period); *provided* that any Indebtedness incurred under this Section 4.09(b)(1) may be extended, replaced, refunded, refinanced, renewed or defeased (including through successive extensions, replacements, refundings, refinancings, renewals and defeasances) with new Indebtedness so long as the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the sum of (x) the principal amount (or accreted value, if applicable) of the Indebtedness being so extended, replaced, refunded, refinanced, renewed or defeased (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced to the extent permanently terminated at the time of incurrence of such new Indebtedness), *plus* (y) any accrued and unpaid interest on the Indebtedness being refinanced, *plus* (z) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the incurrence of such new Indebtedness or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness;

(2) Other Pari Passu Lien Obligations incurred by any Issuer or any Restricted Subsidiary, which when aggregated with all other Pari Passu Lien Obligations incurred in reliance on this clause (2), together with any Refinancing Indebtedness in respect thereof (excluding Incremental Amounts) do not exceed the Other Pari Passu Lien Obligations Debt Limit after giving pro forma effect to such incurrence and the application of the net proceeds therefrom;

(3) (a) the incurrence by the Issuer or the Co-Issuer and any Subsidiary Guarantor of Indebtedness represented by the Notes and related Guarantees (but excluding any Additional Notes and related guarantees issued after the Issue Date); (b) the incurrence by the Issuer or the Co-Issuer and any Subsidiary Guarantor of Indebtedness represented by the obligations under the 2020 Bond Financing Agreement and related guarantees (but excluding any obligations under the 2020 Bond Financing Agreement related to additional bonds and related guarantees issued after the Issue Date); and (c) the incurrence by the Issuer or the Co-Issuer and any Subsidiary Guarantor of Indebtedness represented by obligations under the 2019 Bond Financing Agreement and related guarantees (but excluding any obligations under the 2019 Bond Financing Agreement related to additional bonds and related guarantees issued after the Issue Date);

(4) the incurrence of Indebtedness by the Issuer and any Restricted Subsidiary in existence on the Issue Date (excluding Indebtedness described in Sections 4.09(b)(1), (2) and (3));

(5) (a) the incurrence of Attributable Indebtedness and (b) Indebtedness (including Purchase Money Obligations) and Disqualified Stock incurred or issued by the Issuer or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock and/or Preferred Stock incurred or issued and outstanding under this clause (5) at such time, not to exceed (as of the date such Indebtedness, Disqualified Stock and/or Preferred Stock is issued, incurred or otherwise obtained) the greater of (x) $100.0 million and (y) 35% of Consolidated EBITDA of the Issuer and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);

(6) Indebtedness incurred by the Issuer or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(7) the incurrence of Indebtedness arising from agreements of the Issuer or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets, property or a Person that becomes a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets, property or a Person that becomes a Subsidiary for the purpose of financing such acquisition;

(8) the incurrence of Indebtedness or the issuance of Disqualified Stock by the Issuer and owing to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to any Restricted Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Subsidiary Guarantor or the Co-Issuer is expressly subordinated in right of payment to the Notes to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent the Disqualified Stock is then outstanding) not permitted by this clause (8);

(9) the incurrence of Indebtedness by a Restricted Subsidiary and owing to the Issuer or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Issuer or any Restricted Subsidiary) to the extent such Indebtedness constitutes a Permitted Investment; *provided* that any such Indebtedness for borrowed money incurred by a Subsidiary Guarantor or the Co-Issuer and owing to a Restricted Subsidiary that is not a Subsidiary Guarantor or the Co-Issuer is expressly subordinated in right of payment to the Guarantee of the Notes of such Subsidiary Guarantor or the Obligations under the Notes of the Co-Issuer to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (9);

(10) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Issuer or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Issuer or any Restricted Subsidiary); *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Issuer or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (10);

(11) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(12) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal, surety and similar bonds and performance, banker's acceptance facilities and completion guarantees and similar obligations (including guarantees thereof) provided by the Issuer or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(13) the incurrence of Indebtedness or issuance of Disqualified Stock of the Issuer and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (13), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (x) $100.0 million and (y) 35% of Consolidated EBITDA of the Issuer and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance); plus, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased *plus* (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock;

(14) the incurrence or issuance by the Issuer of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to refund, refinance, extend, replace, renew or defease (collectively, "refinance" with "refinances," "refinanced," and "refinancing" having a correlative meaning) any Indebtedness (including any Designated Revolving Commitments) incurred or Disqualified Stock or Preferred Stock issued as permitted under Sections 4.09(a) and Sections 4.09(b)(2), (3), (4), (5), (13), this Section 4.09(b)(14) and Section 4.09(b)(15) or any successive Refinancing Indebtedness with respect to any of the foregoing;

(15) the incurrence or issuance of:

(a) Indebtedness or Disqualified Stock of the Issuer or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred or issued to finance an acquisition or investment (or other purchase of assets) or that is assumed by the Issuer or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets) including any Acquired Indebtedness; and (b) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Issuer or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture, including any Acquired Indebtedness; *provided* that in the case of the preceding clauses (a) and (b) either:

(A) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Issuer would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; or

(B) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Fixed Charge Coverage Ratio of the Issuer for the Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this clause (B)) would be no less than the Fixed Charge Coverage Ratio immediately prior to giving effect to such incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, in each case, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;

(16) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(17) the incurrence of Indebtedness of the Issuer or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to any Credit Facility, in a principal amount not in excess of the stated amount of such letter of credit or bank guarantee;

(18) (a) the incurrence of any guarantee by the Issuer or a Restricted Subsidiary of Indebtedness or other obligations of the Issuer or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligation incurred by the Issuer or such Restricted Subsidiary is permitted under the terms of this Indenture, or (b) any co-issuance by the Issuer or any Restricted Subsidiary of any Indebtedness or other obligations of the Issuer or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Issuer or such Restricted Subsidiary was permitted under the terms of this Indenture;

(19) the incurrence of Indebtedness issued by the Issuer or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Issuer or any Parent Company to the extent described in Section 4.07(b)(4);

(20) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(21) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Issuer, any Subsidiaries or any joint venture and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(22) Indebtedness incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's length commercial terms;

(23) the incurrence of Indebtedness of the Issuer or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(24) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Issuer that are not Subsidiary Guarantors or the Co-Issuer in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (24), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (a) $100.0 million and (b) 35% of Consolidated EBITDA of the Issuer for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);

(25) [Reserved];

(26) the incurrence of Indebtedness by the Issuer or any Restricted Subsidiary to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Notes in accordance with this Indenture;

(27) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees, and distribution partners and guarantees required by PUCs or other Governmental Authorities in the ordinary course of business;

(28) [Reserved];

(29) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Issuer or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Indenture;

(30) repayment obligations with respect to grants from Governmental Authorities;

(31) [Reserved];

(32) [Reserved];

(33) Qualified Securitization Facilities and, to the extent constituting Indebtedness, Receivables Financing Transactions; and

(34) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (33) of this Section 4.09(b).

(c) For purposes of determining compliance with this Section 4.09:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (34) of Section 4.09(b) or is entitled to be incurred pursuant to Section 4.09(a), the Issuer, in its sole discretion, may divide and classify and may subsequently re-divide and reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or a portion thereof) in such of the above clauses or under Section 4.09(a) as determined by the Issuer at such time; *provided* that all Indebtedness outstanding under the ABL Facility on the Issue Date will, at all times, be treated as incurred on the Issue Date under Section 4.09(b)(1) and may not be reclassified;

(2) the Issuer is entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 4.09(a) and Section 4.09(b), subject to the proviso to Section 4.09(c)(1);

(3) the principal amount of Indebtedness outstanding under any clause of this Section 4.09 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued pursuant to Section 4.09(b) (other than Sections 4.09(b)(1) or (15)) on the same date that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued under Section 4.09(a) or Sections 4.09(b)(1) or (15), then the Fixed Charge Coverage Ratio, or applicable leverage ratio, will be calculated with respect to such incurrence or issuance under Section 4.09(a) or Sections 4.09(b)(1) or (15) without regard to any incurrence or issuance under Section 4.09(b) (other than with respect to any incurrence or issuance under Section 4.09(b)(1) or (15)). Unless the Issuer elects otherwise, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock will be deemed incurred or issued first under Section 4.09(a) or Sections 4.09(b)(1) or (15) to the extent permitted, with the balance incurred or issued under Section 4.09(b) (other than pursuant to Sections 4.09(b)(1) or (15)); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 4.09.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount, and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will, in each case, not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or Preferred Stock for purposes of this Section 4.09. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to Sections 4.09(b)(1), (2), (3), (4), (5),(13), (14) and (15) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased and (II) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the U.S. dollar-equivalent principal amount of Indebtedness, liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower U.S. dollar equivalent)); *provided* that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (1) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased *plus* (2) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (3) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Issuer dated such date prepared in accordance with GAAP.

The Issuers will not, and will not permit any Subsidiary Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is contractually subordinated in right of payment to any Indebtedness of the Issuer or the Co-Issuer or such Subsidiary Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Notes or such Subsidiary Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is contractually subordinated to other Indebtedness of the Issuer or the Co-Issuer or such Subsidiary Guarantor, as the case may be.

For purposes of this Indenture, (1) unsecured Indebtedness will not be deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured, (2) Indebtedness will not be deemed to be subordinated or junior to any other Indebtedness merely because it is issued or guaranteed by other obligors and (3) Secured Indebtedness will not be deemed to be subordinated or junior to any other Secured Indebtedness merely because it has a junior priority lien with respect to the same collateral.

If any Indebtedness is incurred, or Disqualified Stock or Preferred Stock is issued, in reliance on a basket measured by reference to a percentage of Consolidated EBITDA, and any refinancing thereof would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such newly incurred Indebtedness, the liquidation preference of such newly issued Disqualified Stock or the amount of such newly issued Preferred Stock does not exceed the sum of (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

SECTION 4.10. Asset Sales.

(a) The Issuer will not, and will not permit any Restricted Subsidiary to, consummate an Asset Sale, unless:

(1) the Issuer or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75.00% of the consideration for such Asset Sale, together with all other Asset Sales since the Base Date (on a cumulative basis), received by the Issuer or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this Section 4.10(a)(2):

(A) any liabilities (as shown on the Issuer's or any Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Issuer's or a Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Issuer) of the Issuer or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Notes or any Subsidiary Guarantor's Guarantee of the Notes, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Issuer or a Restricted Subsidiary);

(B) any securities, bonds, notes or other obligations or assets received by the Issuer or a Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Issuer or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(C) any Designated Non-Cash Consideration received by the Issuer or a Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (x) $80.0 million and (y) 30% of Consolidated EBITDA of the Issuer for the most recently ended Test Period (calculated on a *pro forma* basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Issuer's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to subsequent changes in value;

(D) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Issuer or a Restricted Subsidiary), to the extent that the Issuer and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale; and

(E) any Investment, Capital Stock, assets, property or capital or other expenditure of the kind referred to in Section 4.10(b)(2).

(b) Within 365 days after the receipt of any Net Proceeds of any Asset Sale (as may be extended pursuant to clause (2) below, the "Asset Sale Proceeds Application Period"), the Issuer or a Restricted Subsidiary, at its option, may apply an amount equal to the Net Proceeds from such Asset Sale:

(1) to:

(A) if the assets subject to such Asset Sale constitute ABL Priority Collateral, prepay, repay, redeem, reduce or purchase ABL Obligations (and to correspondingly reduce commitments with respect thereto);

(B) if the assets subject to such Asset Sale constitute Notes Priority Collateral, prepay, repay, redeem, reduce or purchase Fixed Asset Pari Passu Lien Obligations on a pro rata basis; *provided* that the Issuers will reduce Obligations under the Notes on a pro rata basis by, at their option, (i) redeeming Notes as described in Section 3.07, (ii) purchasing Notes through open-market purchases, at a price equal to (or higher than) 100.00% of the principal amount thereof, or (iii) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Notes on a pro rata basis with such other Indebtedness for no less than 100.00% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the principal amount of Notes to be repurchased to the date of repurchase;

(C) subject to clause (D) below, if the assets subject to such Asset Sale do not constitute Collateral, prepay, repay, redeem, reduce or purchase Obligations under other Indebtedness of the Issuers or a Subsidiary Guarantor (and, if the Indebtedness prepaid, repaid, redeemed, reduced or purchased is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto);

provided that the Issuer shall equally and ratably prepay, repay, redeem, reduce or purchase (or offer to prepay, repay, redeem, reduce or purchase, as applicable) Fixed Asset Pari Passu Lien Obligations (and may elect to reduce other ABL Obligations) on a pro rata basis; *provided further*, the Issuers will reduce Obligations under the Notes on a *pro rata* basis by, at their option, (i) redeeming Notes as described under Section 3.07, (ii) purchasing Notes through open-market purchases, at a price equal to (or higher than) 100.00% of the principal amount thereof, or (iii) making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase their Notes on a *pro rata* basis with such other Indebtedness for no less than 100.00% of the principal amount thereof, *plus* the amount of accrued but unpaid interest, if any, on the principal amount of Notes to be repurchased to the date of repurchase; or

(D) If the assets subject to such Asset Sale do not constitute Collateral prepay, repay, redeem, reduce or purchase Obligations in respect of Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor, other than Obligations owed to the Issuer or a Restricted Subsidiary;

provided that in the case of clauses (B) and (C) above, (i) if an offer to purchase any Indebtedness of the Issuer or any Restricted Subsidiary is made, such amount will be deemed repaid to the extent of the amount of such offer, whether or not accepted by the holders of such Indebtedness, for purposes of compliance with this Section 4.10, and no Net Proceeds in the amount of such offer will be deemed to exist following such offer, and (ii) if the holder of any Indebtedness of the Issuer or any Restricted Subsidiary declines the repayment of such Indebtedness owed to it from such Net Proceeds, such amount will be deemed repaid to the extent of the declined Net Proceeds for purposes of compliance with this Section 4.10 (but such Indebtedness will remain outstanding);

(2) to make (a) an Investment in any one or more businesses; *provided* that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Issuer or any Restricted Subsidiary owning an amount of the Capital Stock of such business such that it constitutes or continues to constitute a Restricted Subsidiary, provided, further that, in the case of an Asset Sale of Collateral, the assets (including Capital Stock) constitute and are pledged as Collateral (and in the case of an Asset Sale of Notes Priority Collateral, constitute and are pledged as Notes Priority Collateral) as provided under the Security Documents, (b) capital expenditures, provided, that, in the case of an Asset Sale of Collateral, such capital expenditures are made with respect to properties or assets that constitute and are pledged as Collateral (and in the case of an Asset Sale of Notes Priority Collateral, constitute and are pledged as Notes Priority Collateral), (c) other expenditures made in connection with the construction or development of facilities operated or to be operated by the Issuer or a Restricted Subsidiary, provided, that, in the event of an Asset Sale of Collateral, such facilities constitute Collateral (and in the case of an Asset Sale of Notes Priority Collateral, constitute and are pledged as Notes Priority Collateral), (d) acquisitions of properties (including fee and leasehold interests) *provided*, that, in the event of an Asset Sale of Collateral, such properties constitute and are pledged as Collateral (and in the case of an Asset Sale of Notes Priority Collateral, constitute and are pledged as Notes Priority Collateral) or (e) acquisitions of other assets, other than securities, in the case of clauses (a), (d) and this clause (e), either (i) that are or will be used or useful in a Similar Business or (ii) that replace, in whole or in part, the properties or assets that are the subject of such Asset Sale provided, that, in the event of an Asset Sale of Collateral, such other assets constitute Collateral (and in the case of an Asset Sale of Notes Priority Collateral, constitute and are pledged as Notes Priority Collateral); *provided* further that in the case of this clause (2), a binding commitment will be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer or a Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (or, if later, 365 days after the receipt of such Net Proceeds) (an "Acceptable Commitment") and, in the event that any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, then such Net Proceeds will constitute Excess Proceeds (as defined below); or

(3) any combination of the foregoing.

(c) Notwithstanding the foregoing, (i) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary (a "Foreign Disposition") are prohibited or delayed by applicable local law from being repatriated to the United States, the amount equal to the portion of such Net Proceeds so affected will not be required to be applied in compliance with this covenant, and such amounts may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Issuer hereby agreeing to use reasonable efforts to cause the applicable Foreign Subsidiary to take all actions reasonably required by the applicable local law to permit such repatriation), and if such repatriation of any of such affected Net Proceeds is permitted under the applicable local law, an amount equal to such Net Proceeds permitted to be repatriated will be applied (whether or not repatriation actually occurs) in compliance with this covenant (net of any additional taxes that are or would be payable or reserved against as a result thereof) and (ii) to the extent that the Issuer has determined in good faith that repatriation of any or all of the Net Proceeds of any Foreign Disposition could have a material adverse tax consequence (which for the avoidance of doubt, includes, but is not limited to, any purchase whereby doing so the Issuer, any Restricted Subsidiary or any of their Affiliates and/or equity partners would incur a material tax liability, including a material deemed dividend pursuant to Code Section 956 or material withholding tax), the amount equal to the Net Proceeds so affected will not be required to be applied in compliance with this covenant.

(d) The amount equal to the Net Proceeds from Asset Sales, that are not invested or applied as provided and within the time period set forth in Section 4.10(b) (it being understood that any portion of such Net Proceeds used to make an offer to purchase Notes pursuant to Section 4.10(b)(1)(B) and (C) will be deemed to have been so applied whether or not such offer is accepted) will be deemed to constitute "Excess Proceeds". When the aggregate amount of Excess Proceeds exceeds $50.0 million, the Issuers will make an offer (an "Asset Sale Offer") to all Holders and, at the option of the Issuers, to any holders of any Pari Passu Indebtedness to purchase the maximum aggregate principal amount of the Notes and such Pari Passu Indebtedness that is in an amount equal to at least $2,000, or an integral multiple of $1,000 in excess of $2,000, that may be purchased out of the Excess Proceeds at an offer price, in the case of the Notes, in cash in an amount equal to 100.00% of the principal amount thereof (or accreted value thereof, if less), plus accrued and unpaid interest, if any (or, in respect of such Pari Passu Indebtedness, such other price, if any, as may be provided for by the terms of such Pari Passu Indebtedness), to, but excluding, the date fixed for the closing of such offer, in accordance with the procedures set forth in Section 3.09 (or, in respect of such Pari Passu Indebtedness, the agreement or instrument governing the terms thereof). The Issuers will commence an Asset Sale Offer with respect to Excess Proceeds within thirty days after the date that the amount of Excess Proceeds exceeds $50.0 million by mailing or electronically delivering the notice required pursuant to Section 3.09, with a copy to the Trustee, or otherwise in accordance with Applicable Procedures. The Issuers may satisfy the foregoing obligation with respect to any Net Proceeds from an Asset Sale by making an offer to purchase Notes with respect to the amount of all or part of the available Net Proceeds (the "Advance Portion") prior to the expiration of the Asset Sale Proceeds Application Period with respect to the amount of all or a part of the available Net Proceeds in advance of being required to do so by this Indenture (the "Advance Offer").

To the extent that the aggregate principal amount (or accreted value, as applicable) of Notes and Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds (or in the case of an Advance Offer, the Advance Portion), the Issuer and its Restricted Subsidiaries may use any remaining Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) in any manner not prohibited by this Indenture (any such remaining Excess Proceeds and Advance Portion amount, "Declined Excess Proceeds"). If the aggregate principal amount (or accreted value, as applicable) of Notes and/or the Pari Passu Indebtedness surrendered in an Asset Sale Offer exceeds the amount of Excess Proceeds (or in the case of an Advance Offer, the Advance Portion), the Trustee will select the Notes to be purchased in the manner described in Section 3.02 and the Issuers will select such Pari Passu Indebtedness to be purchased pursuant to the terms of such Pari Passu Indebtedness; *provided* that as between the Notes and any Pari Passu Indebtedness, such purchases will be made on a *pro rata* basis based on the accreted value or principal amount of the Notes or such Pari Passu Indebtedness tendered with adjustments as necessary so that no Notes or Pari Passu Indebtedness will be repurchased in part in an unauthorized denomination. Upon completion of any such Asset Sale Offer, for purposes of this provision the amount of Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) that resulted in the Asset Sale Offer or Advance Offer will be reset to zero (regardless of whether there are any remaining Excess Proceeds (or Advance Portion) upon such completion). An Asset Sale Offer or Advance Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Indenture, Notes and/or Guarantees (but the Asset Sale Offer or Advance Offer may not condition tenders on the delivery of such consents).

(e) Pending the final application of the amount of any Net Proceeds pursuant to this Section 4.10, such amount of Net Proceeds may be applied to temporarily reduce Indebtedness outstanding under a revolving credit facility, including under the ABL Facility, or otherwise invested in any manner not prohibited by this Indenture.

(f) The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer or Advance Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations described in this Indenture by virtue thereof.

(g) The Issuers' obligation to make an offer to repurchase the Notes pursuant to this Section 4.10 may be waived or modified with the written consent of the Holders of a majority in principal amount of the then outstanding Notes.

SECTION 4.11. Transactions with Affiliates.

(a) The Issuer will not, and will not permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an "Affiliate Transaction") involving aggregate payments or consideration in excess of $50.0 million, unless:

(1) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Issuer or the relevant Restricted Subsidiaries than those that would have been obtained at such time in a comparable transaction by the Issuer or such Restricted Subsidiary with a Person other than an Affiliate of the Issuer on an arm's-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Issuer or such Restricted Subsidiary from a financial point of view; and

(2) the Issuer delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of $100.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with Section 4.11(a)(1).

(b) Section 4.11(a) will not apply to the following:

(1) (a) transactions between or among the Issuer and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Issuer and any Parent Company; *provided* that such merger, consolidation or amalgamation of the Issuer is otherwise in compliance with the terms of this Indenture and effected for a bona fide business purpose;

(2) (a) Restricted Payments permitted by Section 4.07 hereof (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition), (b) any "Permitted Investments" or any acquisition otherwise permitted by this Indenture and (c) Indebtedness permitted by Section 4.09;

(3) (a) the payment of management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreements (including any unpaid management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreements and (b) the payment of indemnification and similar amounts to, and reimbursement of expenses of, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors;

(4) any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any present, future or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer, any of its Subsidiaries or any Parent Company that are, in each case, approved by the Issuer in good faith; and the provision of reasonable and customary compensation and other benefits (including the payment of any fees and compensation, benefit plan or arrangement, any health, disability or similar insurance plan), indemnities and reimbursements of expenses and employment and severance arrangements to, or on behalf of, or for the benefit of such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Issuer, any of its Subsidiaries or any Parent Company;

(5) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Issuer, any of its Subsidiaries or any Parent Company, or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice;

(6) transactions in which the Issuer or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with a Person that is not an Affiliate of the Issuer on an arm's-length basis;

(7) the existence of, or the performance by the Issuer or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Issue Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Issue Date);

(8) the existence of, or the performance by the Issuer or any Restricted Subsidiary of its obligations under the terms of, any equity holder agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any amendment thereto and similar agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Issuer or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Issue Date will only be permitted by this clause (8) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole (as compared to the original agreement or arrangement in effect on the Issue Date);

(9) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(10) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Indenture that are fair to the Issuer and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Issuer, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(11) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Issuer or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Issuer;

(12) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility and any other transaction effected in connection with a Qualified Securitization Facility or a financing related thereto;

(13) payments by the Issuer or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;

(14) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and repurchase and cancellation of any thereof) of the Issuer, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Issuer, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Issuer in good faith;

(15) (a) investments by Affiliates in securities or Indebtedness of the Issuer or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Issuer or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Issuer or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Issuer and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;

(16) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(17) payments by the Issuer (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Issuer (and any Parent Company) and its Subsidiaries; *provided* that in each case the amount of such payments by the Issuer and its Subsidiaries are permitted under Section 4.07(b)(14);

(18) any lease or sublease entered into between the Issuer or any Restricted Subsidiary, as lessee or sublessee, and any Affiliate of the Issuer, as lessor or sublessor, and transactions pursuant to that lease which lease or sublease is approved by the Board of Directors or senior management of the Issuer in good faith;

(19) (i) intellectual property licenses in the ordinary course of business or consistent with industry practice and (ii) intercompany intellectual property licenses and research and development agreements;

(20) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Issuer or any Parent Company pursuant to any equity holders agreement or registration rights agreement entered into on or after the Issue Date;

(21) transactions permitted by, and complying with Section 5.01 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Issuer or any Parent Company, (b) forming a holding company or (c) reincorporating the Issuer or the Co-Issuer in a new jurisdiction;

(22) transactions undertaken in good faith (as determined by the Board of Directors or senior management of the Issuer) for the purposes of improving the consolidated tax efficiency of the Issuer and its Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth in this Indenture;

(23) (a) transactions with a Person that is an Affiliate of the Issuer (other than an Unrestricted Subsidiary) solely because the Issuer or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Issuer, any Restricted Subsidiary or any Parent Company;

(24) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Issuer or a Parent Company;

(25) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Issuer;

(26) investments by any Investor or Parent Company in securities or Indebtedness of the Issuer or the Co-Issuer or any Subsidiary Guarantor;

(27) payments on the Notes in accordance with this Indenture and payments of Obligations under the Credit Facilities and payments in respect of Obligations under other Indebtedness, Disqualified Stock or Preferred Stock of the Issuer and its Subsidiaries held by Affiliates; *provided* that such Obligations were acquired by an Affiliate of the Issuer in compliance with this Indenture;

(28) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and

(29) any transaction on arm's length terms with a non-Affiliate that becomes an Affiliate as a result of such Transaction.

SECTION 4.12. Liens.

(a) Parent will not and the Issuers will not, and will not permit any Subsidiary Guarantor to, create, incur or assume any Lien (except Permitted Liens) that secures Indebtedness on any Collateral or any income or profits therefrom, or assign or convey any right to receive income therefrom.

(b) Subject to the foregoing, the Issuers will not, and will not permit any Restricted Subsidiary to, create, incur or assume any Lien (except Permitted Liens) that secures Obligations under any Indebtedness or any related guarantee of Indebtedness, on any asset or property of the Issuer or the Co-Issuer or any Restricted Subsidiary that is not Collateral, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(1) in the case of Liens securing Subordinated Indebtedness, the Notes and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens until such time as such Subordinated Indebtedness is no longer secured by such Liens; and

(2) in all other cases, the Notes or the Guarantees are equally and ratably secured until such time as such Obligations are no longer secured by such Liens.

For purposes of determining compliance with this Section 4.12, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in the definition thereof but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, the Issuer will, in its sole discretion, be entitled to divide, classify or reclassify, in whole or in part, any such Lien (or any portion thereof) among one or more of such categories or clauses in any manner.

Any Lien created for the benefit of the Holders pursuant to Section 4.12(b) will be deemed automatically and unconditionally released and discharged upon the release and discharge of each of the Liens described in clauses (1) and (2) of Section 4.12(b) or upon such Liens no longer attaching to assets or property of the Issuer or the Co-Issuer or a Restricted Subsidiary so secured.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this covenant.

SECTION 4.13. Company Existence. Subject to Article V hereof, the Issuer shall do or cause to be done all things necessary to preserve and keep in full force and effect its organizational existence, and the corporate, partnership or other organizational existence of each of its Restricted Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Issuer or any such Restricted Subsidiary; *provided* that the Issuer shall not be required to preserve the corporate, partnership or other organizational existence of its Restricted Subsidiaries, if the Issuer in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and its Restricted Subsidiaries, taken as a whole.

SECTION 4.14. Offer to Repurchase Upon Change of Control.

(a) If a Change of Control occurs, unless the Issuers have previously or concurrently electronically delivered or mailed a redemption notice with respect to all the outstanding Notes as described under Section 3.07 or Section 11.01, the Issuers will make an offer to purchase all of the Notes pursuant to the offer described below (the "Change of Control Offer") at a price in cash (the "Change of Control Payment") equal to 101.00% of the aggregate principal amount thereof *plus* accrued and unpaid interest, if any, to, but excluding, the date of repurchase, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date prior to such repurchase. Within 60 days following any Change of Control, the Issuers will send notice of such Change of Control Offer electronically or by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder at such Holder's registered address or otherwise in accordance with the Applicable Procedures, with the following information:

(1) a Change of Control Offer is being made pursuant to this Section 4.14 and all Notes properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Issuers;

(2) the purchase price and the purchase date, which will be no earlier than 20 Business Days nor later than 60 days from the date such notice is mailed or otherwise delivered (the "Change of Control Payment Date"), subject to extension (in the case where such notice is mailed or otherwise delivered prior to the occurrence of the Change of Control) in the event that the occurrence of the Change of Control is delayed;

(3) any Note not properly tendered will remain outstanding and continue to accrue interest;

(4) unless the Issuers default in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(5) Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed to the Paying Agent at the address specified in the notice or otherwise in accordance with Applicable Procedures, prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) Holders will be entitled to withdraw their tendered Notes and their election to require the Issuers to purchase such Notes; *provided* that the Paying Agent receives, not later than the close of business on the second Business Day prior to the expiration date of the Change of Control Offer, a facsimile transmission or letter or other notice in accordance with the Applicable Procedures setting forth the name of the Holder, the principal amount of Notes tendered for purchase, and a statement that such Holder is withdrawing its tendered Notes and its election to have such Notes purchased;

(7) Holders whose Notes are being purchased only in part will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered; *provided* that the unpurchased portion of the Notes must be equal to at least $2,000 or any integral multiple of $1,000 in excess of $2,000;

(8) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control and describing each such condition, and, if applicable, stating that, in the Issuer's discretion, the Change of Control Payment Date may be delayed until such time (including more than 60 days after the date the notice was mailed or delivered, including by electronic transmission) as any or all such conditions are satisfied (or waived by the Issuers in their sole discretion), or such purchase may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Issuers in their sole discretion) by the Change of Control Payment Date, or by the Change of Control Payment Date as so delayed, or such notice may be rescinded at any time in the Issuer's discretion if in the good faith judgment of the Issuer any or all of such conditions will not be satisfied. In addition, the Issuers may provide in such notice that payment of the purchase price and performance of the Issuers' obligations with respect to such purchase may be performed by another Person; and

(9) the other instructions, as determined by the Issuer, consistent with this Section 4.14, that a Holder must follow in order to have its Notes repurchased.

(b) The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Notes by the Issuers pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations described in this Indenture by virtue thereof.

(c) On the Change of Control Payment Date, the Issuers will, to the extent permitted by law:

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

(2) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof validly tendered and not validly withdrawn; and

(3) deliver, or cause to be delivered, to the Trustee (a) an Officer's Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Issuers and (b) at the Issuers' option, the Notes so accepted for cancellation.

(d) The Issuers will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuers and purchases all Notes validly tendered and not validly withdrawn under such Change of Control Offer.

(e) A Change of Control Offer may be made in advance of a Change of Control and conditional upon such Change of Control if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Other than as specifically provided in this Section 4.14, any purchase pursuant to this Section 4.14 shall be made pursuant to Sections 3.02, 3.05 and 3.06, and references therein to "redeem," "redemption," "Redemption Date" and similar words shall be deemed to refer to "purchase," "repurchase," "Change of Control Payment Date" and similar words, as applicable.

(g) A Change of Control Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Indenture, Notes and/or Guarantees (but the Change of Control Offer may not condition tenders on the delivery of such consents).

(h) The Issuers' obligation to make an offer to repurchase the Notes pursuant to this Section 4.14 may be waived or modified (at any time, including after a Change of Control) with the written consent of the Holders of a majority in principal amount of the Notes then outstanding.

SECTION 4.15. Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.

The Issuer will not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiary guarantees Indebtedness under the ABL Facility, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement or Capital Markets Indebtedness of the Issuer or the Co-Issuer or any Subsidiary Guarantor), other than the Co-Issuer, a Subsidiary Guarantor or an Excluded Subsidiary, to guarantee the payment of (i) any Indebtedness of the Issuer or the Co-Issuer or any Subsidiary Guarantor under the Credit Facilities incurred under Section 4.09(b)(1), (ii) the 2020 Bond Financing Agreement and the Series 2020 Note, (iii) the 2019 Bond Financing Agreement and the Series 2019 Note or (iv) Capital Markets Indebtedness of the Issuer or the Co-Issuer or any Subsidiary Guarantor, in each case, having an aggregate principal amount outstanding in excess of $50.0 million unless:

(1) such Restricted Subsidiary within 30 days executes and delivers to the Trustee a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Issuer or the Co-Issuer or any Subsidiary Guarantor if such Indebtedness is by its express terms subordinated in right of payment to the Notes or such Subsidiary Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness will be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the Notes; and

(2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other applicable rights against the Issuer or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee;

provided that this Section 4.15 will not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary. The Issuer may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Subsidiary Guarantor to become a Subsidiary Guarantor, in which case such Subsidiary will not be required to comply with clause (1) or (2) of this Section 4.15 and such Guarantee may be released at any time in the Issuer's sole discretion.

SECTION 4.16. Suspension of Covenants.

(a) During any period of time that (i) the Notes have an Investment Grade Rating and (ii) no Default has occurred and is continuing under this Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event" and the date thereof being referred to as the "Suspension Date"), the Issuer and the Restricted Subsidiaries will not be subject to Section 4.07, Section 4.08, Section 4.09, Section 4.10, Section 4.11, Section 4.15 (but only with respect to any Person that would otherwise be required to become a Subsidiary Guarantor after the date of commencement of the applicable Suspension Period) and Section 5.01(a)(1)(d) hereof shall not be applicable to the Notes (collectively, the "Suspended Covenants").

(b) During a Suspension Period (as defined below), the Issuer may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to the second sentence of the definition of "Unrestricted Subsidiary."

(c) In the event that the Issuer and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of the foregoing, and on any subsequent date (the "Reversion Date") the Notes no longer have an Investment Grade Rating, then the Suspended Covenants will be reinstated and the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events.

(d) The period of time between the Suspension Date and the Reversion Date is referred to in this Indenture as the "Suspension Period". Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds will be reset to zero for purposes of Section 4.10.

(e) In the event of any such reinstatement, no action taken or omitted to be taken by the Issuer or any Restricted Subsidiary or events occurring prior to such reinstatement with respect to any of the Suspended Covenants will give rise to a Default or Event of Default under this Indenture with respect to the Notes; *provided* that:

(1) with respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments made will be calculated as though Section 4.07 had been in effect prior to, but not during, the Suspension Period;

(2) all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to Section 4.09(b)(4);

(3) any Affiliate Transaction entered into after the Reversion Date pursuant to an agreement entered into during any Suspension Period will be deemed to be permitted pursuant to Section 4.11(b)(7);

(4) any encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Subsidiary Guarantor to take any action described in Section 4.08(a) that becomes effective during any Suspension Period will be deemed to be permitted Section 4.08(b)(1);

(5) all Liens permitted to be created, incurred or assumed during the Suspension Period will be deemed to have been outstanding on the Issue Date, so that they are classified as permitted under clause (11) of the definition of "Permitted Liens"; and

(6) all Investments made during the Suspension Period will be deemed to have been outstanding on the Issue Date, so that they are classified as Permitted Investments permitted under clause (5) of the definition of "Permitted Investments."

(f) Notwithstanding that the Suspended Covenants may be reinstated after the Reversion Date, (i) no Default, Event of Default or breach of any kind will be deemed to exist under this Indenture, the Notes or the Guarantees with respect to the Suspended Covenants, and none of the Issuer or any of its Restricted Subsidiaries will bear any liability for any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising during a Suspension Period, in each case, as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or, upon termination of the Suspension Period or after that time, based on any action taken or event that occurred during the Suspension Period) and (ii) following a Reversion Date, the Issuer and each Restricted Subsidiary will be permitted, without causing a Default or Event of Default, to honor, comply with or otherwise perform any contractual commitments or obligations arising during any Suspension Period (that were permitted to be entered into at such time) and to consummate any transactions contemplated thereby.

(g) Upon the Reversion Date, the obligation to grant Guarantees pursuant Section 4.15 will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was incurred for purposes of Section 4.15).

(h) The Trustee shall have no duty to (i) monitor the ratings of the Notes, (ii) determine whether a Covenant Suspension Event or Reversion Date has occurred, or (iii) notify Holders of any of the foregoing.

SECTION 4.17. Limitations on Activities of the Co-Issuer.

The Co-Issuer shall not hold any material assets, become liable for any material obligations, engage in any trade or business, or conduct any business activity, other than (1) the issuance of its Capital Stock to the Issuer or any Wholly-Owned Restricted Subsidiary of the Issuer, (2) the incurrence of Indebtedness as a co-obligor or guarantor, as the case may be, of the Notes, the 2020 Bond Financing Agreement, the Series 2020 Note, the 2019 Bond Financing Agreement, the Series 2019 Note, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings, and any other Indebtedness that is permitted to be incurred pursuant to Section 4.09 and (3) activities incidental thereto.

SECTION 4.18. Limitations on Activities of Parent.

(a) Parent shall not conduct, transact or otherwise engage in any business or operations other than (i) owning Capital Stock of the Issuer and operations incidental thereto, (ii) the maintenance of its legal existence and general operations (including the ability to incur fees, costs and expenses relating to such maintenance and general operations including professional fees for legal, tax and accounting issues), (iii) the performance of its obligations, including the incurrence, and performance in respect, of guarantees and other liabilities, with respect to the Notes, the 2020 Bond Financing Agreement, the Series 2020 Note, the 2019 Bond Financing Agreement, the Series 2019 Note, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings, (iv) any public offering of its common stock or any other issuance of its Equity Interests or any corporate transaction permitted under this Indenture, (v) financing activities, including, without limitation, Credit Facilities, the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of its Subsidiaries and guaranteeing any Indebtedness, liabilities or other obligations of its Subsidiaries or Parent Companies and the performance of its obligations with respect thereto, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Parent and the Issuer or any direct or indirect parent of Parent and its Subsidiaries, (vii) holding any cash or property received in connection with Restricted Payments made by the Issuer in accordance with Section 4.07 hereof pending application thereof by Parent, (viii) providing indemnification to officers and directors, (ix) conducting, transacting or otherwise engaging in any business or operations of the type that it conducts, transacts or engages in on the Issue Date, (x) any transaction that Parent is permitted to enter into or consummate under this Indenture, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment financings and any transaction between Parent and the Issuer or any Restricted Subsidiary permitted under this Indenture, the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings, (xi) subject to the following paragraph, its ownership of the Act 9 Bonds and similar bonds in connection with a Specified Sale and Lease-back Transaction, and (xii) activities incidental to the businesses or activities described in the foregoing clauses (i) through (xi); *provided* that, notwithstanding the foregoing, Parent shall not create or acquire (by way of amalgamation, merger, consolidation or otherwise) any material direct Subsidiaries, other than the Issuer or any holding company for the Issuer.

(b) In addition, neither Parent, as owner of the Act 9 Bonds nor any agent or designee of Parent (including Regions Bank as trustee under the Act 9 Trust Indenture), shall, without the prior written consent of the Collateral Agent:

(1) dispose of any Act 9 Bonds or its economic interests therein;

(2) enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff) under the Act 9 Bond Documents (including the enforcement of any right under any other agreement or arrangement to which Parent or its agent or designee and either the City of Osceola or the Issuer is a party); or

(3) commence or join with any Person (other than the Secured Parties) in commencing, or petition for or vote in favor of, any action or proceeding with respect to such rights or remedies (including in any foreclosure action or any proceeding under any Debtor Relief Laws).

ARTICLE V

SUCCESSORS

SECTION 5.01. Merger, Amalgamation, Consolidation or Sale of All or Substantially All Assets.

(a) Neither the Issuer nor the Co-Issuer may consolidate, amalgamate or merge with or into or wind up into (whether or not the Issuer or the Co-Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets, in one or more related transactions, to any Person unless:

(1) (A) the Issuer or the Co-Issuer, as applicable, is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Issuer or the Co-Issuer, as applicable), or to which such sale, assignment, transfer, lease, conveyance or other disposition is made, is a Person organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the "Successor Company"); *provided* that in the case where the surviving Person is not a corporation, a co-obligor of the Notes is a corporation;

(B) the Successor Company, if other than the Issuer or the Co-Issuer, as applicable, expressly assumes all the obligations of the Issuer or the Co-Issuer, as applicable, under this Indenture, the Notes and the Security Documents pursuant to supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Company, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(C) immediately after such transaction, no Default exists;

(D) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the most recently ended Test Period, either:

(i) the Issuer (or Successor Company, as applicable) would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; or,

(ii) the Fixed Charge Coverage Ratio for the Issuer (or Successor Company, as applicable) would be equal to or greater than the Fixed Charge Coverage Ratio for the Issuer immediately prior to such transaction;

(E) each Subsidiary Guarantor, unless it is the other party to the transactions described above, in which case Section 5.01(a)(1)(B) will apply, will have by supplemental indenture or otherwise confirmed that its Guarantee applies to such Person's obligations under this Indenture and the Notes and its obligations under the Security Documents shall continue to be in effect and it shall enter into such supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Company, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions; and

(F) the Issuer or the Co-Issuer, as applicable (or the Successor Company, as applicable), will have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indentures, if any, comply with this Indenture and, if a supplemental indenture or any supplement to any Security Documents is required in connection with such transaction, such supplement or supplemental indenture shall require the Issuer or Co-Issuer, as applicable (or the Successor Company, as applicable) to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(G) Collateral owned by or transferred to the Successor Company shall:

(i) continue to constitute Collateral under this Indenture and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Collateral Agent, the Trustee and the holders of the Notes; and

(iii) not be subject to any Lien other than Permitted Liens.

Notwithstanding the foregoing, failure to satisfy the requirements of Section 5.01(a)(1)(C) and (D) will not prohibit

(1) the Issuer consolidating, amalgamating or merging with or into or winding up into (whether or not the Issuer is the surviving Person), or the sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of its assets, in one or more related transactions, to Parent or a Wholly-Owned Subsidiary of Parent,

(2) the Issuer or the Co-Issuer consolidating with, amalgamating with or merging with or into, or winding up into an Affiliate of the Issuer or the Co-Issuer for the purpose of reincorporating the Issuer or the Co-Issuer in the United States, any state thereof, the District of Columbia or any territory thereof, so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby,

(3) the Issuer or the Co-Issuer converting into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Issuer or the Co-Issuer or the laws of a jurisdiction in the United States (and, if such entity is not a corporation, a co-obligor of the Notes is a corporation organized or existing under such laws), and

(4) the Issuer or the Co-Issuer changing its name.

(b) Subject to Section 10.06, no Subsidiary Guarantor will, and the Issuer will not permit any Subsidiary Guarantor to, consolidate, amalgamate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(1) (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Subsidiary Guarantor or such Person, as the case may be, being herein called the "Successor Person");

(B) the Successor Person, if other than such Subsidiary Guarantor, expressly assumes all the obligations of such Subsidiary Guarantor under this Indenture and such Subsidiary Guarantor's related Guarantee and the Security Documents pursuant to supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Person, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(C) immediately after such transaction, no Default exists;

(D) the Issuer will have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indentures, if any, comply with this Indenture and, if a supplemental indenture or any supplement to any Security Documents is required in connection with such transaction, such supplement or supplemental indenture shall require the Issuer to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(E) Collateral owned by or transferred to the Successor Person shall:

(i) continue to constitute Collateral under this Indenture and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Collateral Agent, the Trustee and the Holders of the Notes; and

(iii) not be subject to any Lien other than Permitted Liens; or

(2) the transaction is not prohibited by Section 4.10.

(c) Notwithstanding the foregoing, any Subsidiary Guarantor may (1) merge, amalgamate or consolidate with or into, wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Subsidiary Guarantor or the Issuer or merge, amalgamate or consolidate with or into, wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to a Restricted Subsidiary of the Issuer (other than the Co-Issuer), so long as the resulting entity remains or becomes a Subsidiary Guarantor, (2) merge with an Affiliate of the Issuer for the purpose of reincorporating the Subsidiary Guarantor in the United States, any state thereof, the District of Columbia or any territory thereof, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor or the laws of a jurisdiction in the United States, (4) liquidate or dissolve or change its legal form if the Issuer determines in good faith that such action is in the best interests of the Issuer and is not materially disadvantageous to the Holders of the Notes or (5) change its name.

(d) In addition, subject to Section 10.07, Parent will not consolidate, amalgamate or merge with or into or wind up into (whether or not Parent is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(1) Parent is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Parent) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of Parent or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (Parent or such Person, as the case may be, being herein called the "Successor Parent Guarantor");

(2) the Successor Parent Guarantor (if other than Parent) expressly assumes all the obligations of such Parent under this Indenture, such Parent's related Parent Guarantee and the Security Documents pursuant to supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Parent Guarantor, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(3) immediately after such transaction, no Default exists;

(4) the Issuer will have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indentures, if any, comply with this Indenture and, if a supplemental indenture or any supplement to any Security Documents is required in connection with such transaction, such supplement or supplemental indenture shall require Parent and the Issuer to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(5) Collateral owned by or transferred to the Successor Parent Guarantor shall:

(i) continue to constitute Collateral under this Indenture and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Collateral Agent, the Trustee and the Holders of the Notes; and

(iii) not be subject to any Lien other than Permitted Liens.

(e) Notwithstanding the foregoing, Parent may (1) merge, amalgamate or consolidate with or into, the Issuer, (2) merge with an Affiliate of the Issuer for the purpose of reincorporating Parent in the United States, any state thereof, the District of Columbia or any territory thereof, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of Parent or the laws of a jurisdiction in the United States or (4) change its name.

SECTION 5.02. Successor Person Substituted. Upon any consolidation, amalgamation or merger, or any winding up, sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Issuer or the Co-Issuer or a Guarantor in accordance with Section 5.01 hereof, the Successor Company, Successor Person or Successor Parent Guarantor, as applicable, formed by such consolidation or amalgamation or into or with which the Issuer or the Co-Issuer, such Subsidiary Guarantor or Parent, as applicable, is merged or to which such wind up, sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, amalgamation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture, the Notes and the Guarantees referring to the Issuer or the Co-Issuer, such Guarantor, or Parent, as applicable, shall refer instead to the Successor Company, Successor Person or Successor Parent Guarantor, as applicable, and not to the Issuer or the Co-Issuer, such Subsidiary Guarantor, or Parent as applicable), and may exercise every right and power of the Issuer or the Co-Issuer, such Subsidiary Guarantor, or Parent, as applicable, under this Indenture, the Notes, the Guarantees and the Security Documents, as applicable, with the same effect as if such Successor Company, Successor Person or Successor Parent Guarantor, as applicable, had been named as the Issuer or the Co-Issuer, a Subsidiary Guarantor or Parent, as applicable, herein, and such Subsidiary Guarantor's or Parent's Guarantee and such Subsidiary Guarantor and Parent, as applicable, will be automatically released and discharged from its obligations hereunder, and, in the case of a predecessor Issuer or Co-Issuer shall automatically be released from its obligations thereunder; *provided* that the predecessor Issuer or Co-Issuer shall not be relieved from the obligations under this Indenture, the Notes, the Guarantees and the Security Documents in the case of any lease.

ARTICLE VI

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. An "Event of Default," wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the Notes;

(2) default for 30 days or more in the payment when due of interest on or with respect to the Notes;

(3) failure by the Issuer or the Co-Issuer or any Subsidiary Guarantor for 60 days (or such longer period, not exceeding 180 days, as is reasonably necessary under the circumstances to remedy such failure) after receipt of written notice given by the Trustee or the Holders of not less than 30.00% in principal amount of the then outstanding Notes to comply with any of its obligations, covenants or agreements (other than a default referred to in clause (1) or (2) of this Section 6.01) contained in this Indenture or the Notes;

(4) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary) or the payment of which is guaranteed by the Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary), other than Indebtedness owed to the Issuer or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Notes, if both:

(A) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at its stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $25.0 million or more at any one time outstanding;

(5) failure by the Issuer or any Restricted Subsidiary that is a Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of $25.0 million (net of amounts covered by insurance policies), which final judgments remain unpaid, undischarged, unwaived and unstayed for a period of more than 90 days after such judgment becomes final;

(6) the Issuer or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy 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 Bankruptcy 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; or

(v) generally is not paying its debts as they become due;

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

(i) is for relief against the Issuer or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders), would constitute a Significant Subsidiary), in a proceeding in which the Issuer or any such Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders), would constitute a Significant Subsidiary), is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Issuer or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders), would constitute a Significant Subsidiary), or for all or substantially all of the property of the Issuer or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders), would constitute a Significant Subsidiary); or

(iii) orders the liquidation of the Issuer or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that, taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders), would constitute a Significant Subsidiary);

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(8) the Guarantee of Parent or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary) will for any reason cease to be in full force and effect except as contemplated by the terms of this Indenture or be declared null and void in a final non-appealable judgment of a court of competent jurisdiction or any Financial Officer of Parent or any Subsidiary Guarantor that is a Significant Subsidiary (or the responsible officers of any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary), as the case may be, denies in writing that it has any further liability under its Guarantee or gives written notice to such effect, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture.

(9) (A) the failure by the Issuer or any Restricted Subsidiary to comply for 60 days after notice with its other agreements contained in the Security Documents except for a failure that would not be material to the Holders and would not materially affect the value of the Collateral taken as a whole or (B) any security document for the benefit of Holders of the Notes or any obligation under the Collateral Trust Agreement or Intercreditor Agreement is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, other than in accordance with the terms of the relevant security documents or Collateral Trust Agreement or Intercreditor Agreement; or

(10) with respect to any Collateral having a fair market value in excess of $25.0 million, individually or in the aggregate, (A) the failure of the security interest with respect to such Collateral under the Collateral Trust Agreement, at any time, to be in full force and effect for any reason other than in accordance with their terms and the terms of this Indenture or the Intercreditor Agreement, if applicable, which failure continues for 60 days or (B) the assertion by the Issuer, the Co-Issuer or any Guarantor, in any pleading in any court of competent jurisdiction, that any such security interest is invalid or unenforceable.

SECTION 6.02. Acceleration. If any Event of Default (other than an Event of Default specified in Sections 6.01(6) or (7) with respect to either Issuer) occurs and is continuing under this Indenture, the Trustee by written notice to the Issuers or the Holders of at least 30.00% in principal amount of the then total outstanding Notes by written notice to the Issuers and the Trustee may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Upon the effectiveness of such declaration, such principal of and premium, if any, and interest will be due and payable immediately. The Trustee may withhold from the Holders notice of any continuing Default, except a Default relating to the payment of principal, premium, if any, or interest, if it determines that withholding notice is in their interest. The Trustee will have no obligation to accelerate the Notes.

Notwithstanding the foregoing, in the case of an Event of Default arising under Sections 6.01(6) or (7) hereof with respect to the Issuer, all outstanding Notes shall be due and payable immediately without further action or notice.

The Holders of a majority of the aggregate principal amount of the then outstanding Notes, by written notice to the Trustee, may on behalf of the Holders of all of the Notes waive any existing Default and its consequences hereunder (except a continuing Default with respect to non-payment of interest on, premium, if any, or the principal of any Note held by a non-consenting Holder) and rescind any acceleration with respect to the Notes and its consequences if such rescission would not conflict with any judgment of a court of competent jurisdiction.

In the event of any Event of Default specified in Section 6.01(4) hereof, such Event of Default and all consequences thereof (excluding any resulting payment default, other than as a result of acceleration of the Notes) will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders, if:

(1) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged;

(2) the requisite holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(3) the default that is the basis for such Event of Default has been cured, waived or is no longer continuing.

SECTION 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

SECTION 6.04. Waiver of Past Defaults. Subject to Section 6.02 hereof, Holders of a majority in aggregate principal amount of the then outstanding Notes, by written notice to the Trustee, may on behalf of the Holders of all of the Notes waive any existing Default and its consequences hereunder (except a continuing Default in the payment of interest on, premium, if any, or the principal of any Note held by a non-consenting Holder) (including in connection with an Asset Sale Offer or a Change of Control Offer). Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 6.05. Control by Majority. Holders of a majority in principal amount of the then total outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Notwithstanding the foregoing, for purposes of any Act of Required Pari Passu Lien Secured Parties the Trustee shall cast all of the votes that the Holders are entitled to vote in accordance with the vote of the Holders of largest principal amount of total outstanding Notes received by it on or before the 30th day following any written request to cast votes regardless of whether such largest principal amount constitutes a majority of the total outstanding principal amount of Notes.

SECTION 6.06. Limitation on Suits. Subject to Section 6.07 hereof, no Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

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

(2) Holders of at least 30.00% in principal amount of the total outstanding Notes have requested in writing the Trustee to pursue the remedy;

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

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

(5) Holders of a majority in principal amount of the total outstanding Notes have not given the Trustee a direction inconsistent with such written request within such 60-day period.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 6.07. Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to bring suit for the enforcement of any payment of principal of, premium, if any, and interest on the Notes on or after the respective due dates expressed in the Note (including in connection with an Asset Sale Offer or a Change of Control Offer), shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by Trustee. If an Event of Default specified in Section 6.01(1) or (2) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 6.09. Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuers, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

SECTION 6.10. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 6.11. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 6.12. Trustee May File Proofs of Claim. The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Issuers (or any other obligor upon the Notes including the Guarantors), its creditors or its property and shall be entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee on behalf of such Holder, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.13. Priorities. If the Trustee or any Agent collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

(i) to the Trustee, such Agent, their agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee or such Agent and the costs and expenses of collection;

(ii) to Holders for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

(iii) to the Issuers or to such party as a court of competent jurisdiction shall direct including a Guarantor, if applicable.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.13.

SECTION 6.14. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10.0% in principal amount of the then outstanding Notes.

ARTICLE VII

TRUSTEE

SECTION 7.01. Duties of Trustee.

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

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

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

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

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.02, 6.04 or 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01 and Section 7.01(f).

(e) The Trustee shall be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless the Holders have offered (and if requested, provide) to the Trustee indemnity or security satisfactory to it against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

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

SECTION 7.02. Rights of Trustee.

(a) The Trustee may conclusively rely upon and shall be fully protected in acting or refraining from acting upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney at the sole cost of the Issuers and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of

Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

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

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuers shall be sufficient if signed by an Officer thereof.

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

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

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

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

(j) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(k) Delivery of reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the

Issuers' compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

(l) The permissive rights of the Trustee to take certain actions under this Indenture shall not be construed as a duty unless so specified herein.

(m) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney at the sole cost of the Issuers, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

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

(o) The Trustee may request that the Issuers deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

SECTION 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any of their Affiliates with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.10 hereof.

SECTION 7.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuers' use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers' direction under any provision of this Indenture, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

SECTION 7.05. Notice of Defaults. If a Default occurs and is continuing and if it is known to the Trustee, the Trustee shall deliver to Holders a notice of the Default within 90 days after it occurs. Except in the case of a Default relating to the payment of principal, premium, if any, or interest on any Note, the Trustee may withhold from the Holders notice of any continuing Default if and so long as it in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.06. [Reserved].

SECTION 7.07. Compensation and Indemnity. The Issuers shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuers shall reimburse the Trustee promptly upon request for all reasonable out-of-pocket disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Issuers and the Guarantors, jointly and severally, shall indemnify the Trustee for, and hold the Trustee harmless against, any and all loss, damage, claims, liability or expense (including reasonable attorneys' fees and expenses) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the reasonable costs and expenses of enforcing this Indenture against the Issuer or the Co-Issuer or any of the Guarantors (including this Section 7.07) or defending itself against any claim whether asserted by any Holder, the Issuer or the Co-Issuer or any Guarantor, or any other Person or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder) (but excluding taxes imposed on such persons in connection with compensation for such administration or performance). The Trustee shall notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers shall not relieve the Issuers of their obligations hereunder. The Issuers shall defend the claim and the Trustee may have separate counsel and the Issuers shall pay the reasonable fees and expenses of such counsel. Neither the Issuers nor any Guarantor need reimburse any expense or indemnify against any loss, liability or expense determined to have been caused by the Trustee through the Trustee's own willful misconduct or negligence. Neither the Issuers nor any Guarantor need pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

The obligations of the Issuers under this Section 7.07 and the immunities of the Trustee contained in Article VII shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

To secure the payment obligations of the Issuers and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee, except for money or property held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(6) or (7) hereof occurs, the expenses and the compensation for the services (including the reasonable fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 7.08. Replacement of Trustee. A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08. The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuers in writing not less than 30 days prior to the effective date of such removal. The Issuers may remove the Trustee if:

(A) the Trustee fails to comply with Section 7.10 hereof;

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

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

(D) the Trustee becomes incapable of acting.

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

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuers' expense), the Issuers or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

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

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

The resigning Trustee shall have no responsibility or liability for any action or inaction of a successor Trustee.

SECTION 7.09. Successor Trustee by Merger, etc. If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee.

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

ARTICLE VIII

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 8.01. Option to Effect Legal Defeasance or Covenant Defeasance. The Issuers may, at their option and at any time, elect to have either Section 8.02 or 8.03 hereof applied to all outstanding Notes and all obligations of the Guarantors with respect to the Guarantees upon compliance with the conditions set forth below in this Article VIII.

SECTION 8.02. Legal Defeasance and Discharge.

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

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

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

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

(D) this Section 8.02.

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

SECTION 8.03. Covenant Defeasance.

Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15 and 4.17 hereof and Sections 5.01(a)(1)(d) and (e), and Section 5.01(b) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied ("Covenant Defeasance"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes shall not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and the Guarantees, the Issuers and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document, and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and the Guarantees shall be unaffected thereby. In addition, upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) (solely with respect to the covenants that are released upon a Covenant Defeasance), 6.01(4), 6.01(5), 6.01(6) (solely with respect to the Issuers' Restricted Subsidiaries), 6.01(7) (solely with respect to the Issuer's Restricted Subsidiaries) and 6.01(8) hereof shall not constitute Events of Default.

SECTION 8.04. Conditions to Legal or Covenant Defeasance.

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the Notes:

(1) the Issuers must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, U.S. dollar-denominated Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of an Independent Financial Advisor to the extent such amounts consist of U.S. dollar-denominated Government Securities, to pay the principal of, premium, if any, and interest due on the Notes on the stated maturity date or on the applicable Redemption Dates, as the case may be, and the Issuers must specify whether such Notes are being defeased to maturity or to a particular Redemption Date; *provided* that upon any redemption that requires the payment of the Applicable Premium, the amount deposited will be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the date of redemption (any such amount, the "Applicable Premium Deficit") only required to be deposited with the Trustee on or prior to the date of redemption; provided, however, that the Trustee shall have no liability whatsoever in the event that such deposit is not made after the Trustee has discharged this Indenture. Any Applicable Premium Deficit will be set forth in an Officer's Certificate delivered to the Trustee simultaneously with the deposit of such Applicable Premium Deficit that confirms that such Applicable Premium Deficit will be applied toward such redemption;

(2) in the case of Legal Defeasance, the Issuers will have delivered to the Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions:

(a) the Issuers have received from, or there has been published by, the United States Internal Revenue Service a ruling, or

(b) since the issuance of the Notes, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will confirm that, subject to customary assumptions and exclusions, the Holders and the beneficial owners of the Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

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

(4) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens and the consummation of other transactions in connection therewith) shall have occurred and be continuing on the date of such deposit;

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under the 2020 Bond Financing Agreement, the 2019 Bond Financing Agreement, the ABL Facility or any other material agreement, instrument or documents (other than this Indenture) to which, the Issuer or the Co-Issuer or any Guarantor is a party or by which the Issuer or the Co-Issuer or any Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such Legal Defeasance or Covenant Defeasance and any similar and simultaneous deposit relating to other Indebtedness to be redeemed, and, in each case, the granting of Liens and the consummation of other transactions in connection therewith);

(6) the Issuers will have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or the Co-Issuer or any Guarantor or others; and

(7) the Issuers will have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance, as the case may be, have been complied with.

Notwithstanding the foregoing, an Opinion of Counsel required by clause (2) of the immediately preceding paragraph with respect to Legal Defeasance need not be delivered if all of the Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable or (ii) will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers.

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

Subject to Section 8.06 hereof, all money and Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer, the Co-Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

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

SECTION 8.06. Repayment to Issuers. Subject to any applicable abandoned property law, any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium, if any, or interest on any Note and remaining unclaimed for two years after such principal, and premium, if any, or interest has become due and payable shall be paid to the Issuers on their request or (if then held by the Issuers) shall be discharged from such trust; and the Holder of such Note shall thereafter look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, shall thereupon cease.

SECTION 8.07. Reinstatement. If the Trustee or Paying Agent is unable to apply any United States dollars or Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers' and the Guarantors' obligations under this Indenture and the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided* that, if the Issuers make any payment of principal of, premium, if any, or interest on any Note following the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE IX

AMENDMENT, SUPPLEMENT AND WAIVER

SECTION 9.01. Without Consent of Holders.

Notwithstanding Section 9.02 hereof, the Issuer, the Co-Issuer, any Guarantor (with respect to a Guarantee to which it is a party) and the Trustee may amend or supplement this Indenture and any Guarantee or Notes without the consent of any Holder:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to comply with Section 5.01 hereof;

(4) to provide for the assumption of the Issuers' or any Guarantor's obligations to the Holders;

(5) to make any change that would provide any additional rights or benefits to the Holders or that does not materially adversely affect (as determined in good faith by the Issuer) the legal rights under this Indenture of any such Holder;

(6) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the Issuer or the Co-Issuer or any Guarantor;

(7) at the Issuer's election, to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act, if applicable (it being agreed that this Indenture need not qualify under the Trust Indenture Act);

(8) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee hereunder pursuant to the requirements hereof;

(9) to add a Guarantor or co-obligor under this Indenture or to release a Guarantor in accordance with the terms of this Indenture;

(10) to conform the text of this Indenture, Guarantees or the Notes to any provision of the "Description of Notes" section of the Offering Circular to the extent that such provision in such "Description of Notes" section was intended to be a verbatim recitation of a provision of this Indenture, the Security Documents, Guarantee or Notes, as provided to the Trustee in an Officer's Certificate;

(11) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, to facilitate the issuance and administration of the Notes; *provided* that (a) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer Notes;

(12) to provide for the issuance of Additional Notes in accordance with the terms of this Indenture;

(13) to make, complete or confirm any grant of Collateral permitted or required by this Indenture or any of the Security Documents or any release, termination or discharge of Collateral that becomes effective as set forth in this Indenture or any of the Security Documents;

(14) to grant any Lien for the benefit of the holders of any future Pari Passu Lien Obligations or ABL Obligations in accordance with and permitted by the terms of this Indenture, the Collateral Trust Agreement and the Intercreditor Agreement;

(15) to add additional secured parties to the Collateral Trust Agreement and Intercreditor Agreement to the extent Liens securing obligations held by such parties are permitted under this Indenture;

(16) to mortgage, pledge, hypothecate or grant a security interest in favor of the Collateral Agent for the benefit of the Trustee and the Holders of the Notes as additional security for the payment and performance of the Issuers', Parent's and any Subsidiary Guarantor's obligations under this Indenture, in any property, or assets, including any of which are required to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to the Trustee in accordance with the terms of this Indenture or otherwise; or

(17) to provide for the succession of any parties to the Security Documents (and other amendments that are administrative or ministerial in nature), the Collateral Trust Agreement and the Intercreditor Agreement in connection with an amendment, renewal, extension, substitution, refinancing, restructuring, replacement, supplementing or other modification from time to time of any agreement in accordance with the terms of this Indenture and the relevant security document the Collateral Trust Agreement and the Intercreditor Agreement.

Upon the request of the Issuer accompanied by a resolution of the Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Sections 7.02 and 13.04 hereof, the Trustee shall join with the Issuer and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall have the right, but not be obligated to, enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, no Opinion of Counsel shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto.

SECTION 9.02. With Consent of Holders.

Except as provided below in this Section 9.02, the Issuer, the Co-Issuer, the Guarantors (solely with respect to the Guarantee to which it is a party) and the Trustee may amend or supplement this Indenture, the Notes and the Guarantees with the consent of the Holders of at least a majority in principal amount of the Notes (including Additional Notes, if any) then outstanding voting as a single class (including consents obtained in connection with a purchase of, tender offer or exchange offer for, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes (including Additional Notes, if any), other than Notes beneficially owned by the Issuer or its Affiliates, voting as a single class (including consents obtained in connection with a tender offer or exchange offer or offer to purchase with respect to the Notes); *provided* that (x) if any such amendment or waiver will only affect one series of Notes (or less than all series of Notes) then outstanding hereunder, then only the consent of the Holders of a majority in principal amount of the Notes of such series then outstanding (including, in each case, consents obtained in connection with a tender offer or exchange offer or offer to purchase with respect to the Notes) shall be required and (y) if any such amendment or waiver by its terms will affect a series of Notes in a manner different and materially adverse relative to the manner such amendment or waiver affects other series of Notes, then the consent of the Holders of a majority in principal amount of the Notes of such adversely affected series then outstanding (including, in each case, consents obtained in connection with a tender offer or exchange offer or offer to purchase with respect to the Notes) shall be required. Section 2.08 hereof and Section 2.09 hereof shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

Upon the request of the Issuer accompanied by a resolution of its board of directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee shall join with the Issuer, the Co-Issuer and the Guarantors (solely with respect to the Guarantee to which it is a party) in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuers shall deliver to the Holders affected thereby (with a copy to the Trustee) a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuers to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Without the consent of each affected Holder (including, for the avoidance of doubt, any Notes held by Affiliates), an amendment or waiver under this Section 9.02 may not, with respect to any Notes held by a non-consenting Holder:

(1) reduce the principal amount of such Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed final maturity of any such Note or reduce the premium payable upon the redemption of such Notes on any date (other than the provisions relating to Section 3.09, Section 4.10 and Section 4.14); *provided* that any amendment to the notice requirements may be made with the consent of the Holders of a majority in aggregate principal amount of then outstanding Notes;

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default in the payment of principal of or premium, if any, or interest on the Notes, except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all affected Holders;

(5) make any Note payable in money other than that stated therein;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults;

(7) make any change in this Article IX that is materially adverse to the Holders;

(8) modify the contractual right hereunder of any Holder to institute suit for the payment of principal, interest or premium (if any) on or with respect to such Holder's Notes on or after the respective due dates;

(9) make any change to or modify the ranking of the Notes that would adversely affect the Holders; or

(10) except as expressly permitted by this Indenture, modify the Guarantees of any Guarantor, in any manner materially adverse to the Holders.

In addition, without the consent of the Holders of at least 66 2/3% of the principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes), no amendment, supplement or waiver may (1) modify any Security Document or the provisions in this Indenture dealing with Security Documents or application of trust moneys in any manner, taken as a whole, adverse to the Holders of the Notes or otherwise release any Collateral other than in accordance with this Indenture, the Security Documents and the Collateral Trust Agreement and Intercreditor Agreement; (2) modify the Collateral Trust Agreement or the Intercreditor Agreement in any manner adverse to the Holders in any material respect other than in accordance with the terms of this Indenture, the Security Documents and the Collateral Trust Agreement and Intercreditor Agreement or (3) release the Liens for the benefit of Holders of the Notes on all or substantially all of the Collateral.

SECTION 9.03. [Reserved].

SECTION 9.04. Revocation and Effect of Consents. Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

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

SECTION 9.05. Notation on or Exchange of Notes. The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuers in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

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

SECTION 9.06. Trustee to Sign Amendments, etc. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article IX if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Issuer or the Co-Issuer may not sign an amendment, supplement or waiver until the Board of Directors of the Issuer or the Co-Issuer, as applicable, approves it. In executing any amendment, supplement or waiver, the Trustee shall receive, and shall be fully protected in relying conclusively upon, in addition to the documents required by Section 13.04 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuers and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof.

Notwithstanding the foregoing, no Opinion of Counsel will be required for the Trustee to execute any amendment or supplement in the form of Exhibit D attached hereto adding a new Guarantor under this Indenture. In addition, no Officer's Certificate or Opinion of Counsel will be required in connection with the execution of the supplemental indenture delivered on the Issue Date.

ARTICLE X

GUARANTEES

SECTION 10.01. Guarantee.

Subject to this Article X, each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees, on a secured basis, to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the Obligations of the Issuers hereunder or thereunder, that (a) the principal of and interest and premium, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder, including for expenses, indemnification or otherwise, shall be promptly paid in full, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other Obligations, that same shall be promptly paid in full when due in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same promptly. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor (other than payment in full of all of the Obligations of the Issuers hereunder and under the Notes).

Each Guarantor hereby waives, to the fullest extent permitted by law, diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenants that this Guarantee shall not be discharged except by full payment of the obligations contained in the Notes and this Indenture or by release in accordance with the provisions of this Indenture.

Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee or any Holder in enforcing any rights under this Section 10.01.

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

Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article VI hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article VI hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors shall have the right to seek contribution from any nonpaying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuers for liquidation, reorganization, should any of the Issuers become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuers' assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

The Guarantee issued by any Guarantor shall be a general, secured, senior obligation of such Guarantor and shall be *pari passu* in right of payment with all existing and future Senior Indebtedness of such Guarantor, if any.

Each payment to be made by a Guarantor in respect of its Guarantee shall be made without setoff, counter-claim, reduction or diminution of any kind or nature.

SECTION 10.02. Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of the Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article X, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's *pro rata* portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with GAAP.

SECTION 10.03. Execution and Delivery. To evidence its Guarantee set forth in Section 10.01 hereof, (i) each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer or person holding an equivalent title and (ii) a supplemental indenture in the form Exhibit D shall be executed on behalf of any guarantor that becomes a party hereto after the date hereof by one of its Officers or a person holding an equivalent title.

Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 hereof shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Guarantee of such Guarantor shall be valid nevertheless.

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

If required by Section 4.15 hereof, the Issuer shall cause any newly created or acquired Restricted Subsidiary to comply with Section 4.15 and this Article X, to the extent applicable.

SECTION 10.04. Subrogation.

Until its Guarantee is terminated in accordance with Section 10.06 or Section 10.07, each Guarantor agrees that it shall not be entitled to exercise any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby; *provided* that, if an Event of Default has occurred and is continuing, no 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 Issuer under this Indenture or the Notes shall have been paid in full.

SECTION 10.05. Benefits Acknowledged.

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

SECTION 10.06. Release of Guarantees by Subsidiary Guarantors.

(a) Each Guarantee by a Subsidiary Guarantor will provide by its terms that it shall be automatically and unconditionally released and discharged and shall thereupon terminate and be of no further force and effect, and no further action by such Subsidiary Guarantor, the Issuers or the Trustee is required for the release of such Subsidiary Guarantor's Guarantee, upon:

(1) any sale, exchange, issuance, disposition or transfer (by merger, amalgamation, consolidation or otherwise) of (a) the Capital Stock of such Subsidiary Guarantor, after which the applicable Subsidiary Guarantor is no longer a Restricted Subsidiary, or (b) all or substantially all of the assets of such Subsidiary Guarantor (including to any of the Issuers or another Subsidiary Guarantor), in each case if such sale, exchange, issuance, disposition or transfer is made in compliance with the applicable provisions of this Indenture;

(2) (a) the release or discharge of the guarantee by, or direct obligation of, such Subsidiary Guarantor of Indebtedness under the ABL Facility, the 2020 Bonds, the 2019 Bonds, Other Pari Passu Lien Obligations or Capital Markets Indebtedness that, in any case, constitute ABL Obligations or Fixed Asset Pari Passu Lien Obligations of any of the Issuers or any Subsidiary Guarantor, or (b) the release or discharge of such other guarantee that resulted in the creation of such Guarantee, except, in each case, a discharge or release by or as a result of payment under such guarantee or direct obligation (it being understood that, in each case, a release subject to a contingent reinstatement is still a release);

(3) (a) the designation of any Restricted Subsidiary that is a Subsidiary Guarantor as an Unrestricted Subsidiary in compliance with the applicable provisions of this Indenture or (b) such Subsidiary Guarantor otherwise becoming an Excluded Subsidiary (other than pursuant to clause (1) of the definition thereof);

(4) (a) the exercise by the Issuers of their Legal Defeasance option or Covenant Defeasance option in accordance with Article VIII hereof or (b) the discharge of the Issuers' obligations under this Indenture in accordance with the terms of this Indenture;

(5) the merger, amalgamation or consolidation of any Subsidiary Guarantor with and into the Issuer, the Co-Issuer or a Subsidiary Guarantor that is the surviving Person in such merger, amalgamation or consolidation, or upon the liquidation of a Subsidiary Guarantor following the transfer of all or substantially all of its assets, in each case in a transaction that is not prohibited by this Indenture; or

(6) as described under Article IX.

(b) The Issuer will have the right, upon delivery of an Officer's Certificate to the Trustee and Collateral Agent, to cause any Subsidiary Guarantor that has not guaranteed any Indebtedness under the ABL Facility, the 2020 Bonds, the 2019 Bonds, Other Pari Passu Lien Obligations or any Capital Markets Indebtedness that, in any case, constitutes ABL Obligations or Fixed Asset Pari Passu Lien Obligations of any of the Issuers or any Subsidiary Guarantor, and is not otherwise required by the applicable terms of this Indenture to provide a Guarantee, to be unconditionally released and discharged from all obligations under its Guarantee, and such Guarantee will thereupon automatically and unconditionally terminate and be discharged and of no further force or effect.

SECTION 10.07. Parent Guarantee.

(a) Parent will irrevocably and unconditionally guarantee on a senior secured basis, including by its pledge of all of the Equity Interests of the Issuer, the full and punctual payment when due, whether at maturity, by acceleration or otherwise, all obligations of the Issuers under this Indenture and the Notes, whether for payment of principal of, premium, if any, or interest in respect of the Notes, expenses, indemnification or otherwise on terms set forth in this Indenture by executing this Indenture or a supplement thereto (all such obligations guaranteed by the Parent being herein called the "Parent Guaranteed Obligations").

(b) The Parent Guarantee is subject to important limitations. Parent does not currently have any Subsidiaries other than the Issuer and its Subsidiaries. Parent and each of its future Subsidiaries (other than the Issuers and their Restricted Subsidiaries) will not be subject to any of the covenants set forth below other than those described in Section 4.12, Section 4.18 and Section 5.01. None of the Subsidiaries of Parent (other than the Issuers and their Restricted Subsidiaries) will guarantee or otherwise provide credit support for the Notes. As a result, the Parent Guarantee will be effectively subordinated to the present and future liabilities of Parent's Subsidiaries (other than the Issuers and their Restricted Subsidiaries), if any.

(c) The Parent Guarantee will be automatically released upon:

(1) the Issuer ceasing to be a Wholly-Owned Subsidiary of Parent;

(2) the Issuer's transfer of all or substantially all of its assets to, or merger with, an entity that is not a Wholly-Owned Subsidiary of Parent in accordance with Section 5.01, and such transferee entity assumes Issuer's obligations under this Indenture; or

(3) the Issuers' exercise of their legal defeasance option or covenant defeasance option as described in Section 8.03 or if the Issuers' obligations under this Indenture are discharged in accordance with the terms of this Indenture.

ARTICLE XI

SATISFACTION AND DISCHARGE

SECTION 11.01. Satisfaction and Discharge.

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

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

(2) (a) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of one or more notices of redemption or otherwise, will become due and payable within one year or may be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuers, and the Issuer or the Co-Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, U.S. dollar-denominated Government Securities, or a combination thereof, in such amounts as will be sufficient (without consideration of any reinvestment of interest), in the opinion of an Independent Financial Advisor to the extent such amounts consist of U.S. dollar-denominated Government Securities, to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption; *provided* that (i) upon any redemption that requires the payment of the Applicable Premium, the amount deposited will be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any Applicable Premium Deficit only required to be deposited with the Trustee on or prior to the date of redemption and (ii) any Applicable Premium Deficit will be set forth in an Officer's Certificate delivered to the Trustee simultaneously with the deposit of such Applicable Premium Deficit that confirms that such Applicable Premium Deficit will be applied toward such redemption;

(b) the Issuers have paid or caused to be paid all sums payable by it under this Indenture; and

(c) the Issuers have delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the Redemption Date, as the case may be.

In addition, the Issuers must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied. Such Opinion of Counsel may rely on such Officer's Certificate as to matters of fact, including clauses (2)(a), (b) and (c) above.

Notwithstanding the satisfaction and discharge of this Indenture, Section 7.07 and, if money shall have been deposited with the Trustee pursuant to subclause (a) of clause (2) of this Section 11.01, Section 11.02 and Section 8.06 hereof shall survive such satisfaction and discharge.

SECTION 11.02. Application of Trust Money. Subject to Section 8.06, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer or the Co-Issuer or a Guarantor acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

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

ARTICLE XII

SECURITY DOCUMENTS

SECTION 12.01. Security Interest.

On the Issue Date, the Notes will be the senior secured obligations of the Issuers. From and after the Issue Date, the due and punctual payment of the principal of, premium (if any) and interest, if any, on, the Notes when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium (if any) and interest, if any, on the Notes and performance of all other obligations of the Issuers and the Guarantors to the Holders or the Trustee and the Notes (including, without limitation, the Guarantees), according to the terms hereunder or thereunder, are secured as provided herein and in the Security Documents.

Each Holder, by its acceptance of a Note, consents and agrees to the terms of the Security Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral) as the same may be in effect or may be amended from time to time in accordance with their terms and authorizes and appoints U.S. Bank National Association as the Trustee and as the Collateral Agent, and each Holder directs the Trustee to enter (and to direct the Collateral Agent to enter) into the Security Documents and to perform its obligations and exercise its rights thereunder in accordance with the provisions thereof. Each of the Issuers and the Guarantors consents and agrees to be bound by the terms of the Security Documents, as the same may be in effect from time to time, and agrees to perform its respective obligations thereunder in accordance therewith.

The Issuers will do or cause to be done all such acts and things as may be required by the provisions of the Security Documents, to assure and confirm to the Collateral Agent the security interest in the Collateral contemplated by the Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes. The Issuers and the Guarantors will take, and will cause the Subsidiary Guarantors to take, any and all actions reasonably required to cause the Security Documents to create and maintain, as security for the Pari Passu Lien Obligations, a valid and enforceable perfected Lien in and on all the Collateral in favor of the Collateral Agent for the benefit of the Holders of the Notes, holders of other Pari Passu Lien Obligations, in each case, to the extent expressly required by, and with the Lien priority required under, the Pari Passu Lien Debt Documents.

SECTION 12.02. Collateral Trust Agreement

This Article XII and the provisions of each other Security Document are subject to the terms, conditions and benefits set forth in the Collateral Trust Agreement. Each of the Issuers and the Guarantors consents to, and agrees to be bound by, the terms of the Collateral Trust Agreement, as the same may be in effect from time to time, and to perform its obligations thereunder in accordance therewith. Each Holder of Notes, by its acceptance of the Notes (a) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Collateral Trust Agreement, (b) authorizes and instructs the Trustee, on behalf of each holder of Obligations, to execute and deliver the Collateral Trust Agreement (and to direct the Collateral Agent to execute and deliver the Collateral Trust Agreement), to appoint the Collateral Agent thereunder, and to perform its obligations thereunder as Priority Lien Representative and (c) authorizes and instructs the Collateral Agent to execute, deliver and perform its obligations under the Security Documents.

SECTION 12.03. Collateral Agent.

(1) U.S. Bank National Association will initially act as the Collateral Agent for the benefit of the Holders of (i) the Notes and Secured Hedging Obligations; and (ii) all other Pari Passu Lien Obligations outstanding from time to time.

(2) Neither the Issuer nor any of its Affiliates may act as Collateral Agent.

(3) The Collateral Agent will hold (directly or through co-trustees or agents), and will be entitled to enforce, all Liens on the Collateral created by the Pari Passu Lien Debt Documents.

(4) Except as provided in the Collateral Trust Agreement or as directed by an Act of Required Pari Passu Lien Secured Parties, or, as applicable, the Controlling Representative, in accordance with the Collateral Trust Agreement, the Collateral Agent will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person;

(ii) to foreclose upon or otherwise enforce any Lien; or

(iii) to take any other action whatsoever with regard to any or all of the Pari Passu Lien Debt Documents, the Liens created thereby or the Collateral.

The Issuer will deliver to the Trustee copies of all Pari Passu Lien Security Documents delivered to the Collateral Agent.

SECTION 12.04. Release of Liens on Collateral

The Collateral Agent's Liens on the Collateral will be released in any one or more of the circumstances described in the Collateral Trust Agreement, the Intercreditor Agreement and the other Security Documents.

SECTION 12.05. Release of Liens in Respect of Notes

The Collateral Agent's Liens upon the Collateral will no longer secure the Notes outstanding under this Indenture or any other Obligations under this Indenture, and the right of the Holders and such Obligations to the benefits and proceeds of the Collateral Agent's Liens on the Collateral will terminate and be discharged:

(1) upon the satisfaction and discharge of this Indenture, in accordance with Article XI hereof;

(2) upon a Legal Defeasance or Covenant Defeasance of the Notes of the applicable series in accordance with Article VIII hereof;

(3) upon payment in full and discharge of all Notes of the applicable series outstanding under this Indenture and all Obligations that are outstanding, due and payable under this Indenture at the time the Notes of the applicable series are paid in full and discharged; and

(4) in whole or in part, with the consent of the Holders of the requisite percentage of the Notes of the applicable series in accordance with Article IX hereof;

(5) solely with respect to ABL Priority Collateral, if and to the extent required by the Intercreditor Agreement; and

(6) with respect to the assets of any Guarantor, at the time such Guarantor is released from its Guarantee in accordance with Section 10.06 or Section 10.07.

SECTION 12.06. Equal and Ratable Sharing of Collateral by Pari Passu Lien Secured Parties

Notwithstanding:

(1) anything to the contrary contained in the Security Documents;

(2) the time of incurrence of any Series of Pari Passu Lien Debt;

(3) the order or method of attachment or perfection of any Series of Pari Passu Lien Debt;

(4) the time or order of filing or recording of financing statements, mortgages or other documents filed or recorded to perfect any Lien upon any Collateral;

(5) the time of taking possession or control over any Collateral;

(6) that any Pari Passu Lien may not have been perfected or may be or have become subordinated, by equitable subordination or otherwise, to any other Lien; or

(7) the rules for determining priority under any law governing relative priorities of Liens:

(a) all Pari Passu Liens granted at any time by the Issuer or any Guarantor will secure, equally and ratably, all present and future Pari Passu Lien Obligations (including each series of Notes, if any, that remain outstanding following the offering); and

(b) all proceeds of all Pari Passu Liens granted at any time by the Issuer or any Guarantor will be allocated and distributed equally and ratably on account of the Pari Passu Lien Debt and other Pari Passu Lien Obligations.

In addition, this Section 12.06 is intended for the benefit of, and shall be enforceable as a third party beneficiary by, each present and future Holder of Pari Passu Lien Obligations, each present and future Pari Passu Lien Debt Representative and the Collateral Agent as holder of Pari Passu Liens. The Pari Passu Lien Debt Representative of each future Series of Pari Passu Lien Debt shall be required to deliver a Lien sharing and priority confirmation to the Collateral Agent and the Trustee at the time of incurrence of such Series of Pari Passu Lien Debt.

SECTION 12.07. Relative Rights

Nothing in this Indenture or the Security Documents will:

(1) impair, as to the Issuer and the Holders, the obligation of the Issuer to pay principal of, premium and interest on the Notes in accordance with their terms or any other obligation of the Issuer or any other Grantor;

(2) affect the relative rights of Holders as against any other creditors of the Issuer or any other Grantor (other than holders of Pari Passu Liens);

(3) restrict the right of any Holder to sue for payments that are then due and owing (but not enforce any judgment in respect thereof against any Collateral to the extent prohibited by the Collateral Trust Agreement);

(4) restrict or prevent any Holder or other Pari Passu Lien Obligations, the Pari Passu Collateral Agent or any Pari Passu Lien Debt Representative from exercising any of its rights or remedies upon a Default or Event of Default not restricted or prohibited by the Collateral Trust Agreement; or

(5) restrict or prevent the Collateral Agent from taking any lawful action in an Insolvency or Liquidation Proceeding not specifically restricted or prohibited by the Collateral Trust Agreement.

SECTION 12.08. Further Assurances

(a) The Issuer and each of the other Grantors will do or cause to be done all acts and things that may be required, or that the Collateral Agent from time to time may reasonably request, to assure and confirm that the Collateral Agent holds, for the benefit of the Pari Passu Lien Secured Parties, duly created and enforceable and perfected Liens upon the Collateral, (including any property or assets that are acquired or otherwise become, or are required by any Pari Passu Lien Debt Document to become, Collateral after the date thereof), in each case, as expressly required by, and with the Lien priority required under, the Pari Passu Lien Debt Documents.

(b) The Issuer and each of the other Grantors will promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions as may be reasonably required, or that the Collateral Agent may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case, as expressly required by the Pari Passu Lien Debt Documents for the benefit of the Pari Passu Lien Secured Parties.

SECTION 12.09. Intercreditor Agreement.

The Collateral Agent and the Trustee, as applicable, are hereby directed and authorized to enter into any intercreditor agreement on behalf of, and binding with respect to, the Holders and their interest in designated assets, in connection with the incurrence of any debt under the ABL Facility, including to clarify the respective rights of all parties in and to designated assets, including, without limitation, the Intercreditor Agreement. The Collateral Agent shall enter into the Intercreditor Agreement and the Collateral Agent and the Trustee, as applicable, shall enter into any other intercreditor agreement at the request of the Issuer, provided that (in the case of such other intercreditor agreement) the Issuer will have delivered to the Collateral Agent and the Trustee an Officer's Certificate to the effect that such other intercreditor agreement complies with the provisions of this Indenture, the Notes and the Security Documents. The Collateral Agent and the Trustee, as applicable, each agrees to execute and deliver any amendment to, waiver of, or supplement to any Security Document or intercreditor agreement authorized pursuant to Article IX.

The Intercreditor Agreement provides, subject to the terms thereof, for the following priority of the Fixed Asset Pari Passu Lien, on the one hand, relative to the ABL Liens, on the other hand:

(1) subject to certain limitations, any Lien on the ABL Priority Collateral to the extent securing any ABL Obligations now or hereafter held by or on behalf of the ABL Agent, or any other ABL Claimholders or any agent or trustee therefor, shall be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any Fixed Asset Pari Passu Lien Obligations; and

(2) the Fixed Asset Pari Passu Lien Obligations on the Notes Priority Collateral will be senior to the ABL Liens on the Notes Priority Collateral, and, consequently, the holders of any Fixed Asset Pari Passu Lien Obligations will be entitled to receive the proceeds from the disposition of any Notes Priority Collateral prior to the holders of any ABL Obligations.

SECTION 12.10. Trustee Duties

(a) On the Issue Date, the Trustee, as Pari Passu Lien Debt Representative for the Notes, shall enter into the Collateral Trust Agreement to appoint U.S. Bank National Association to act as the Collateral Agent. The Trustee shall not be obligated to take any action (or to direct the Collateral Agent to take any action) under the Collateral Trust Agreement or any other Security Document for any series of Notes without the written direction of the Holders of a majority in aggregate principal amount of the outstanding Notes of such series (or the minimum consent for such action required under this Indenture) and may request the direction of the Holders of a majority in aggregate principal amount of the outstanding Notes of such series (or the minimum consent for such action required under this Indenture) with respect to any such actions and, upon receipt of the written consent of the Holders of a majority in aggregate principal amount of the outstanding Notes of such series (or the minimum consent for such action required under this Indenture) along with security and indemnity satisfactory to the Trustee and the Collateral Agent, shall take such actions.

(b) Neither the Trustee nor any of its officers, directors, employees, attorneys or agents shall be responsible or liable (i) for the legality, enforceability, effectiveness or sufficiency of the Security Documents, for the creation, perfection, priority, sufficiency, maintenance, renewal or protection of any Lien, or for any defect or deficiency as to any such matters, or (ii) for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so, or (iii) for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral.

(c) The rights, privileges, protections, immunities and benefits given to the Trustee under this Indenture, including, without limitation, its right to be indemnified and compensated and all other rights, privileges, protections, immunities and benefits set forth in this Indenture are extended to the Trustee when acting under the Collateral Trust Agreement, the Intercreditor Agreement (if applicable) and the other Pari Passu Lien Debt Documents on behalf of the Holders.

(d) The Trustee will not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens on the Collateral.

(e) Whenever an action under the Collateral Trust Agreement requires an Act of Required Pari Passu Lien Secured Parties, the Trustee, in its capacity as Pari Passu Lien Debt Representative, shall be entitled to seek the direction of Holders of each series of the Notes. Subject to the next succeeding sentence, if the minimum consent or directions of Holders of such series for such action required by Sections 6.05 or 9.02 or otherwise under this Indenture are met, the Trustee shall deliver a written direction to the Collateral Agent on behalf of such series (i) directing such Act of Required Pari Passu Lien Secured Parties and (ii) notifying the Collateral Agent of the aggregate principal amount of such series of Notes consenting or directing such action (it being agreed that if the requisite percentage of consent or direction is received by the Trustee, the Trustee shall consent or direct such action on behalf of all of the then outstanding aggregate principal amount of the Notes of such series), which upon request of the Collateral Agent, shall be accompanied by indemnity or security acceptable to the Collateral Agent for any losses, liability or expenses that may be incurred in connection with such direction (it being understood that the Trustee, in its individual capacity, shall not be obligated to provide such indemnity or security). Notwithstanding the foregoing, if the requested action requires the consent or direction of each Holder of the Notes affected thereby, then the Trustee shall not deliver a direction to the Collateral Agent in such Act of Required Pari Passu Lien Secured Parties unless a unanimous consent is obtained for the Holders of both series of Notes. For purposes of determining the consent or direction of Holders for an action under the Collateral Trust Agreement that requires an Act of Required Pari Passu Lien Secured Parties, the Notes registered in the name of, or beneficially owned by, the Issuer or any Affiliate of the Issuer will be deemed not to be outstanding and neither the Issuer nor any Affiliate of the Issuer will be entitled to vote such Notes and the Issuer shall notify the Trustee and the Collateral Agent in writing whether any Notes are owned by it or any of its Affiliates.

ARTICLE XIII

MISCELLANEOUS

SECTION 13.01. [Reserved].

SECTION 13.02. Notices. Any notice or communication by the Issuer, the Co-Issuer, any Guarantor or the Trustee to the others is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), facsimile, electronically (in ".pdf" or other format) or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuer, the Co-Issuer and/or any Guarantor on or after the Issue Date:

Big River Steel LLC
2027 East State Highway 198
Osceola, AR 72370
Tel: (870) 819-3031
Attn: Ari Levy

in each case, with a copy to:

Baker & Hostetler LLP
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
Tel: +1.216.861.6697
Attn: Suzanne Hanselman

If to the Trustee:

U.S. Bank Global Corporate Trust
1350 Euclid Avenue, Suite 1100
CN-OH-RN11
Cleveland, Ohio 44115
Attn: Global Corporate Trust

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

All notices and communications (other than those sent to Holders) shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; on the first date on which publication is made or electronic delivery made; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery; *provided* that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

Any notice or communication to a Holder shall be electronically delivered, mailed by first-class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the Note Register kept by the Registrar.

Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

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

If a notice or communication is mailed or otherwise delivered in the manner provided above within the time prescribed, such notice or communication shall be deemed duly given, whether or not the addressee receives it.

If the Issuers deliver or mail a notice or communication to Holders, they shall deliver or mail a copy to the Trustee and each Agent at the same time.

SECTION 13.03. Communication with Holders of a Global Note. Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event or any other communication (including any notice of redemption or repurchase) to a holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with accepted practices at the Depositary.

SECTION 13.04. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuers or any of the Guarantors to the Trustee to take any action under this Indenture (other than as set forth in the last sentence of Section 9.06 and with respect to clause (B) below, in connection with the initial issuance of Notes on the Issue Date), the Issuers or such Guarantor, as the case may be, shall furnish to the Trustee:

(A) An Officer's Certificate in form reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(B) An Opinion of Counsel in form reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

SECTION 13.05. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(A) a statement that the Person making such certificate or opinion has read such covenant or condition;

(B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(C) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of

Counsel, may be limited to reliance on an Officer's Certificate as to matters of fact); and

(D) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with; *provided*, *however*, that with respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 13.06. Rules by Trustee and Agents. The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

SECTION 13.07. No Personal Liability of Directors, Officers, Employees and Stockholders.

No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Issuer or the Co-Issuer or any Guarantor or any Parent Company will have any liability for any obligations of the Issuer or the Co-Issuer or the Guarantors under the Notes, the Guarantees, this Indenture or any supplemental indenture or for any claim based on, in respect of, or by reason of such obligations or their creation.

Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

SECTION 13.08. Governing Law. THIS INDENTURE, THE NOTES AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 13.09. Waiver of Jury Trial. EACH OF THE ISSUER, THE CO-ISSUER, THE GUARANTORS, AND THE TRUSTEE HEREBY, AND EACH HOLDER OF A NOTE BY ITS ACCEPTANCE THEREBY, IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 13.10. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, pandemics, epidemics, quarantine restrictions, recognized public emergencies, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

SECTION 13.11. No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Restricted Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 13.12. Successors. All agreements of the Issuers in this Indenture and the Notes shall bind their successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 10.06 or Section 10.07 hereof.

SECTION 13.13. Severability. In case any provision or any part of any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 13.14. Counterpart Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Indenture may be executed in multiple counterparts, which, when taken together, shall constitute one instrument. The exchange of copies of this Indenture and of signature pages by facsimile or electronic transmissions (in '.pdf' or other format) shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronically (in '.pdf' or other format) shall be deemed to be their original signatures for all purposes.

SECTION 13.15. Table of Contents, Headings, etc. The Table of Contents, Cross-Reference Table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 13.16. USA PATRIOT Act. The parties hereto acknowledge that in order to help the government fight the funding of terrorism and money laundering activities, pursuant to federal regulations that became effective on October 1, 2003, Section 326 of the USA PATRIOT Act requires all financial institutions to obtain, verify, and record information that identifies each person establishing a relationship or opening an account with U.S. Bank National Association. The parties hereto agree that they will provide the Trustee with name, address, tax identification number, if applicable, and other information that will allow the Trustee to identify the individual or entity who is establishing the relationship, and will further provide the Trustee with formation documents such as articles of incorporation or other identifying documents.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

BIG RIVER STEEL LLC,
as Issuer

By: /s/ Ari Levy
Name: Ari Levy
Title: Chief Financial Officer

BRS FINANCE CORP.,
as Co-Issuer

By: /s/ Ari Levy
Name: Ari Levy
Title: Chief Financial Officer

BRS INTREMDIARY HOLDING LLC.,
as Parent Guarantor

By: /s/ Ari Levy
Name: Ari Levy
Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as
Trustee and Collateral Agent

By: /s/ David A. Schlabach
Name: David A. Schlabach
Title: Vice President

[Signature Page to Indenture]

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the OID Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP [ ]
ISIN [ ]

[RULE 144A][REGULATION S][IAI] GLOBAL NOTE

6.625% Senior Secured Notes due 2029 (Green Bonds)

No. [ ] [Up to] $[ ]

BIG RIVER STEEL LLC
BRS FINANCE CORP.

promises to pay to _____ or registered assigns,

[the principal sum set forth on the Schedule of Exchange of Interests in the Global Note attached hereto] [the principal sum of _____ DOLLARS] on January 31, 2029.

Interest Payment Dates: January 31 and July 31, beginning January 31, 2021

Record Dates: January 15 and July 15

IN WITNESS HEREOF, the Issuers have caused this instrument to be duly executed.

BIG RIVER STEEL LLC,

By: _____
Name:
Title:

BRS FINANCE CORP.,

By: _____
Name:
Title:

This is one of the Notes referred to
in the within-mentioned Indenture:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Dated:

[Back of Note]
6.625% Secured Senior Note due 2029 (Green Bonds)

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST. Big River Steel LLC (the "Issuer") and BRS Finance Corp. (the "Co-Issuer" and together with the Issuer, the "Issuers") promise to pay interest on the principal amount of this Note at a rate per annum of 6.625% from September 18, 2020 until maturity. The Issuers will pay interest on this Note semi-annually in arrears on January 31 and July 31 of each year, beginning January 31, 2021 or, if any such day is not a Business Day, on the next succeeding Business Day (each, an "Interest Payment Date"). The Issuers will make each interest payment to the Holder of record of this Note on the immediately preceding January 15 and July 15 (each, a "Record Date"). Interest on this Note will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that the first Interest Payment Date shall be January 31, 2021. The Issuers will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at the rate borne by this Note; they shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the rate borne by this Note. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. METHOD OF PAYMENT. The Issuers will pay interest on this Note to the Person who is the registered Holder of this Note at the close of business on the Record Date (whether or not a Business Day) next preceding the Interest Payment Date, even if this Note is cancelled after such Record Date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Payments of principal of, premium, if any, and interest on the Notes will be payable at the office or agency of the Issuers maintained pursuant to Section 4.02 of the Indenture or, at the option of the Issuers, may be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion), *provided* that (a) all payments of principal, premium, if any, and interest on, Notes represented by Global Notes registered in the name of or held by DTC or its nominee will be made by wire transfer of immediately available funds to the accounts specified by the Holder or Holders thereof and (b) if no notice of wire transfer election is received for such Holder, all payments of principal, premium, if any, and interest with respect to certificated Notes will be made by check mailed to the Holders at their addresses set forth in the Note Register. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. If a payment date is on a Legal Holiday, payment will be made on the next succeeding day that is not a Legal Holiday and no interest shall accrue for the intervening period.

3. PAYING AGENT AND REGISTRAR. Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuers may change any Paying Agent or Registrar without prior notice to any Holder. The Issuers or any of their Subsidiaries may act in any such capacity.

4. INDENTURE AND SECURITY DOCUMENTS. The Issuers issued the Notes under an Indenture, dated as of September 18, 2020 (the "Indenture"), among (a) Big River Steel LLC, as Issuer, (b) BRS Finance Corp., as Co-Issuer, (c) BRS Intermediate Holdings LLC, as Parent and (d) the Trustee. The Issuers shall be entitled to issue Additional Notes pursuant to Sections 2.1 and 4.09 of the Indenture. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are secured by a pledge of Collateral pursuant to the Security Documents referred to in the Indenture.

5. OPTIONAL REDEMPTION.

(a) At any time prior to September 15, 2023, the Issuers may at their option on one or more occasions redeem all or a part of the Notes, upon notice as described under Section 3.03 of the Indenture, at a redemption price (as calculated by the Issuer) equal to the sum of (i) 100.00% of the principal amount of the Notes redeemed, *plus* (ii) the Applicable Premium, *plus* (iii) accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date occurring prior to the Redemption Date. Any notice of redemption made in connection with a related transaction or event (including an Equity Offering, contribution, Change of Control, Asset Sale or other transaction) may, at the Issuers' discretion, be given prior to the completion or the occurrence thereof, and any such redemption or notice may, at the Issuers' discretion, be subject to one or more conditions precedent, including, but not limited to, the completion or occurrence of the related transaction or event, as the case may be.

(b) At any time prior to September 15, 2023, the Issuers may, at their option and on one or more occasions, redeem up to 40.00% of the aggregate principal amount of Notes and Additional Notes issued under the Indenture at a redemption price (as calculated by the Issuers) equal to the sum of (i) 106.625% of the aggregate principal amount thereof, with an amount equal to or less than the net cash proceeds from one or more Equity Offerings to the extent such net cash proceeds are received by or contributed to the Issuer, *plus* (ii) accrued and unpaid interest thereon, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on the any Interest Payment Date occurring prior to the Redemption Date; *provided* that (a) at least 50.00% of the sum of the aggregate principal amount of Notes originally issued under the Indenture on the Issue Date and any Additional Notes issued under the Indenture after the Issue Date remains outstanding immediately after the occurrence of each such redemption and (b) each such redemption occurs within 180 days of the date of closing of the applicable Equity Offering or contribution.

(c) At any time prior to September 15, 2023, the Issuers may at their option on one or more occasions redeem up to 10.00% of the original aggregate principal amount of the Notes issued under the Indenture during each twelve-month period commencing with the Issue Date at a redemption price (as calculated by the Issuers) equal to 103.00% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date occurring prior to the Redemption Date.

(d) In connection with any Change of Control Offer or other tender offer to purchase all of the Notes, if Holders of not less than 90.00% of the aggregate principal amount of the then outstanding Notes validly tender and do not validly withdraw such Notes in such Change of Control Offer or other tender offer and the Issuers purchase, or any third party making such Change of Control Offer or other tender offer in lieu of the Issuers purchases, all of the Notes validly tendered and not validly withdrawn by such Holders, all of the Holders will be deemed to have consented to such tender offer and accordingly, the Issuers or such third party will have the right upon notice, given not more than 60 days following such purchase date, to redeem all Notes that remain outstanding following such purchase at a price equal to the price offered to each other Holder in such Change of Control Offer or other tender offer, plus, to the extent not included in the Change of Control Offer or other tender offer payment, accrued and unpaid interest, if any, thereon, to, but excluding, the Redemption Date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on an Interest Payment Date that is on or prior to the Redemption Date).

(d) Except pursuant to clause (a), (b), (c) or (d) of Section 3.07 of the Indenture, the Notes will not be redeemable at the Issuers' option prior to September 15, 2023.

(e) On and after September 15, 2023, the Issuers may at their option redeem the Notes, in whole or in part, on one or more occasions, upon notice in accordance with Section 3.03 of the Indenture, at the redemption prices (expressed as percentages of principal amount of the Notes to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but excluding, the Redemption Date, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date occurring prior to the Redemption Date, if redeemed during the twelve-month period beginning on September 15 in each of the years indicated below:

Year	Percentage
2023	103.313%
2024	101.656%
2025 and thereafter	100.000%

(e) Any redemption pursuant to Section 3.07 of the Indenture shall be made pursuant to Sections 3.01 through 3.06 of the Indenture.

6. MANDATORY REDEMPTION; OFFERS TO PURCHASE AND OPEN MARKET PURCHASES. The Issuers will not be required to make any mandatory redemption or sinking fund payments with respect to the Notes. However, under certain circumstances, the Issuers may be required to offer to purchase Notes as described under Sections 3.09, 4.10 and 4.14 of the Indenture.

7. NOTICE OF REDEMPTION. Subject to Section 3.03 of the Indenture, the Issuers shall deliver electronically, mail or cause to be mailed by first-class mail, postage prepaid, notices of redemption at least 10 but not more than 60 days before the Redemption Date to each Holder of the Notes to be redeemed at such Holder's registered address or otherwise in accordance with Applicable Procedures, except that redemption notices may be delivered or mailed more than 60 days prior to a Redemption Date if the notice is issued in connection with Section 3.03(i), Article VIII or Article XI of the Indenture.

8. OFFERS TO REPURCHASE. Upon the occurrence of a Change of Control, the Issuers shall make a Change of Control Offer in accordance with Section 4.14 of the Indenture. In connection with certain Asset Sales, the Issuers shall make an Asset Sale Offer as and when provided in accordance with Sections 3.09 and 4.10 of the Indenture.

9. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in minimum denominations of $2,000 and any integral multiple of $1,000 in excess of $2,000. The transfer of Notes shall be registered and Notes may only be exchanged as provided in the Indenture. The Registrar, Transfer Agent and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not issue, exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not issue, exchange or register the transfer of any Notes during the period of 15 days before the mailing of a notice of redemption of Notes to be redeemed or between a Record Date with respect to such Note and the next succeeding Interest Payment Date with respect to such Note.

10. PERSONS DEEMED OWNERS. The registered Holder shall be treated as its owner for all purposes. Only registered Holders shall have rights hereunder.

11. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

12. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 30.00% in principal amount of the then outstanding Notes by written notice to the Issuers may declare the principal, premium, if any, interest and any other monetary obligations on all the then outstanding Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to the Issuer, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture, the Notes or the Guarantees except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default (except a Default relating to the payment of principal, premium, if any, or interest) if it determines that withholding notice is in their interest. The Holders of a majority of the aggregate principal amount of the then outstanding Notes, by written notice to the Trustee, may on behalf of the Holders of all of the Notes waive any existing Default or and its consequences under the Indenture (except a continuing Default in payment of the principal of, premium, if any, or interest on, any of the Notes held by a nonconsenting Holder). The Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required within thirty (30) days after becoming aware of any Default, to deliver to the Trustee a statement specifying such Default, its status and what actions the Issuers are taking or propose to take with respect thereto.

13. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

14. GOVERNING LAW. THE INDENTURE, THIS NOTE AND ANY GUARANTEE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

15. CUSIP AND ISIN NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers have caused CUSIP and ISIN numbers to be printed on the Notes and the Trustee may use CUSIP and ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to the Issuer at the following address:

Big River Steel LLC
2027 East State Highway 198
Osceola, AR 72370
Tel: (870) 819-3031
Attn: Ari Levy

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____

(Insert assignee's legal name)

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____ to transfer this Note on the books of the Issuers. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.10 or 4.14 of the Indenture, check the appropriate box below:

[ ] Section 4.10 [ ] Section 4.14

If you want to elect to have only part of this Note purchased by the Issuers pursuant to Section 4.10 or Section 4.14 of the Indenture, state the amount you elect to have purchased:

$

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is $. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

* This schedule should be included only if the Note is issued in global form.

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Big River Steel LLC
2027 East State Highway 198
Osceola, AR 72370
Tel: (870) 819-3031
Attn: Ari Levy

U.S. Bank Global Corporate Trust
350 Euclid Avenue, Suite 1100
CN-OH-RN11
Cleveland, Ohio 44115
Attn: Global Corporate Trust

Re: 6.625% Senior Secured Notes due 2029 (Green Bonds)

Reference is hereby made to the Indenture, dated as of September 18, 2020 (the "Indenture"), among (a) Big River Steel LLC, as Issuer, (b) BRS Finance Corp., as Co-Issuer, (c) BRS Intermediate Holdings LLC, as Parent, (d) certain other subsidiaries of the Issuer, as Guarantors, and (e) the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____(the "Transferor") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $ _____ in such Note[s] or interests (the "Transfer"), _____ to _____ (the "Transferee "), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. [ ] CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE RELEVANT 144A GLOBAL NOTE OR RELEVANT DEFINITIVE NOTE PURSUANT TO RULE 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A, and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

2. [ ] CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE RELEVANT REGULATION S GLOBAL NOTE OR RELEVANT DEFINITIVE NOTE PURSUANT TO REGULATION S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the applicable Restricted Period, (x) the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser) and (y) the interest transferred will be held immediately thereafter through Euroclear or Clearstream. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Permanent Global Note, the Regulation S Temporary Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. [ ] CHECK AND COMPLETE IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN THE RELEVANT DEFINITIVE NOTE PURSUANT TO ANY PROVISION OF THE SECURITIES ACT OTHER THAN RULE 144A OR REGULATION S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) [ ] such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act; or

(b) [ ] such Transfer is being effected to the Issuer or a Subsidiary thereof; or

(c) [ ] such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit E to the Indenture and (2) if such Transfer is in respect of a principal amount of Notes at the time of transfer of less than $250,000, an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

4. [ ] CHECK IF TRANSFEREE WILL TAKE DELIVERY OF A BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OR OF AN UNRESTRICTED DEFINITIVE NOTE.

(a) [ ] CHECK IF TRANSFER IS PURSUANT TO RULE 144. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) [ ] CHECK IF TRANSFER IS PURSUANT TO REGULATION S. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) [ ] CHECK IF TRANSFER IS PURSUANT TO OTHER EXEMPTION. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) [ ] a beneficial interest in the:

(i) [ ] 144A Global Note ([CUSIP:]), or

(ii) [ ] Regulation S Global Note ([CUSIP:]), or

(iii) [ ] IAI Global Note ([CUSIP:]; or

(b) [ ] a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) [ ] a beneficial interest in the:

(i) [ ] 144A Global Note ([CUSIP:]), or

(ii) [ ] Regulation S Global Note ([CUSIP:]), or

(iii) [ ] IAI Global Note ([CUSIP:];

(iv) [ ] Unrestricted Global Note ([ ] [ ]), or

(b) [ ] a Restricted Definitive Note; or

(c) [ ] an Unrestricted Definitive Note, in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Big River Steel LLC
2027 East State Highway 198
Osceola, AR 72370
Tel: (870) 819-3031
Attn: Ari Levy

U.S. Bank Global Corporate Trust
1350 Euclid Avenue, Suite 1100
CN-OH-RN11
Cleveland, Ohio 44115
Attn: Global Corporate Trust

Re: 6.625% Senior Secured Notes due 2029 (Green Bonds)

Reference is hereby made to the Indenture, dated as of September 18, 2020 (the "Indenture"), among (a) Big River Steel LLC, as Issuer, (b) BRS Finance Corp., as Co-Issuer, (c) BRS Intermediate LLC as Parent and (d) the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____(the "Owner") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____in such Note[s] or interests (the "Exchange"). In connection with the Exchange, the Owner hereby certifies that:

1) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN A RESTRICTED GLOBAL NOTE FOR UNRESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN AN UNRESTRICTED GLOBAL NOTE OF THE SAME SERIES

a) [ ] CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OF THE SAME SERIES. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note of the same series in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the United States Securities Act of 1933, as amended (the "Securities Act"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

b) [ ] CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO UNRESTRICTED DEFINITIVE NOTE OF THE SAME SERIES. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note of the same series, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

c) [ ] CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN AN UNRESTRICTED GLOBAL NOTE OF THE SAME SERIES. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note of the same series, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

d) [ ] CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO UNRESTRICTED DEFINITIVE NOTE OF THE SAME SERIES. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note of the same series, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2) EXCHANGE OF RESTRICTED DEFINITIVE NOTES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES FOR RESTRICTED DEFINITIVE NOTES OF THE SAME SERIES OR BENEFICIAL INTERESTS IN RESTRICTED GLOBAL NOTES OF THE SAME SERIES

a) [ ] CHECK IF EXCHANGE IS FROM BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE TO RESTRICTED DEFINITIVE NOTE OF THE SAME SERIES. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note of the same series with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

b) [ ] CHECK IF EXCHANGE IS FROM RESTRICTED DEFINITIVE NOTE TO BENEFICIAL INTEREST IN A RESTRICTED GLOBAL NOTE OF THE SAME SERIES. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE]:

[ ] 144A Global Note, or

[ ] Regulation S Global Note, or

[ ] IAI Global Note

in each case of the same series, with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Issuers and are dated.

[Insert Name of Transferor]

By: _____
Name:
Title:

EXHIBIT D

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

[ ] Supplemental Indenture (this "Supplemental Indenture"), dated as of [ ], among [ ] (the "Guaranteeing Subsidiary"), a subsidiary of Big River Steel LLC, a Delaware limited liability company (the "Issuer"), and U.S. Bank National Association, a national banking association, as trustee (the "Trustee").

W I T N E S E T H

WHEREAS, the Issuer and BRS Finance Corp. have heretofore executed and delivered to the Trustee an Indenture (as amended, supplemented or modified from time to time, the "Indenture"), dated as of September 18, 2020, providing for the issuance of $900,000,000 aggregate principal amount of 6.625% Senior Secured Notes due 2029 (Green Bonds) (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture
(the "Guarantee"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. The Guaranteeing Subsidiary acknowledges that it has received and reviewed a copy of the Indenture and all other documents it deems necessary to review in order to enter into this Supplemental Indenture and (i) hereby joins and becomes a party to the Indenture as indicated by its signature below as a Guarantor and (ii) acknowledges and agrees to (x) be bound by the Indenture as a Guarantor and (y) perform all obligations and duties required of a Guarantor pursuant to the Indenture.

(3) No Recourse Against Others. No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Issuer or the Co-Issuer or any Guarantor or any Parent Company will have any liability for any obligations of the Issuer or the Co-Issuer or the Guarantors under the Notes, the Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

(4) Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(5) Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. This Supplemental Indenture may be executed in multiple counterparts, which, when taken together, shall constitute one instrument. The exchange of copies of this Supplemental

Indenture and of signature pages by facsimile or electronic (by '.pdf' or other format) transmissions shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronically (by '.pdf' or other format) shall be deemed to be their original signatures for all purposes.

(6) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(7) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

(8) Benefits Acknowledged. Upon execution and delivery of this Supplemental Indenture the Guaranteeing Subsidiary will be subject to the terms and conditions set forth in the Indenture. The Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that its obligations as a result of this Supplemental Indenture are knowingly made in contemplation of such benefits.

(9) Successors. All agreements of the Guaranteeing Subsidiary in this Supplemental Indenture shall bind its successors, except as otherwise provided in this Supplemental Indenture. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: _____
Name:
Title:

EXHIBIT E

FORM OF CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Big River Steel LLC
2027 East State Highway 198
Osceola, AR 72370
Tel: (870) 819-3031
Attn: Ari Levy

U.S. Bank Global Corporate Trust
1350 Euclid Avenue, Suite 1100
CN-OH-RN11
Cleveland, Ohio 44115
Attn: Global Corporate Trust

Re: 6.625% Senior Secured Notes due 2029 (Green Bonds)

Reference is hereby made to the Indenture, dated as of September 18, 2020 (the "Indenture"), among (a) Big River Steel LLC, as issuer (the "Company"), (b) BRS Finance Corp., as co-issuer (the "Co-Issuer" and together with the Company, the "Issuers"), (c) BRS Intermediate LLC as Parent and (d) the Trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $ _____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Issuers or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Issuers a signed letter substantially in the form of this letter and, if such transfer is in respect of a principal amount of Notes, at the time of transfer of less than $250,000, an Opinion of Counsel in form reasonably acceptable to the Issuers to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, or (E) pursuant to the provisions of Rule 144 under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Issuers such certifications, legal opinions and other information as you and the Issuers may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Issuers are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

_____

[Insert Name of Accredited Investor]

By: _____

Name:

Title:

Dated: _____

Exhibit 10.1

Execution Version

FIRST AMENDMENT TO ABL CREDIT AGREEMENT

This FIRST AMENDMENT TO ABL CREDIT AGREEMENT, dated as of September 10, 2020 (this "Amendment"), is by and among BIG RIVER STEEL LLC, a Delaware limited liability company (the "Borrower"), BRS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company ("Holdings"), GOLDMAN SACHS BANK USA, as administrative agent (in such capacity, the " Administrative Agent") and collateral agent (in such capacity, the "Collateral Agent") under the Loan Documents, and each Lender party hereto.

WHEREAS, reference is hereby made to the ABL Credit Agreement, dated as of August 23, 2017 (the "Original Credit Agreement" and, as amended by this Amendment, the "Credit Agreement"; capitalized terms used and not defined herein shall have the meaning ascribed to such terms in the Original Credit Agreement or the Credit Agreement, as the context may require), among the Borrower, Holdings, the Administrative Agent, the Collateral Agent and the Lenders party thereto;

WHEREAS, pursuant to Section 10.01 of the Credit Agreement, Holdings, the Borrower and the Lenders party hereto desire to amend the Original Credit Agreement for certain purposes;

WHEREAS, subject to the terms and conditions set forth herein, all of the Lenders on the signature pages hereto, by executing and delivering a counterpart to this Amendment in accordance with Section 4 hereto, shall be deemed to have consented to the amendments set forth in Section 1 hereof;

NOW, THEREFORE, in consideration of the premises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. Amendments.

(a) On the Amendment Effective Date (defined below), the Original Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the Credit Agreement attached to this Amendment as Annex A.

(b) On the Amendment Effective Date, Schedule 2.01 (Commitments) to the Original Credit Agreement is hereby amended and restated in its entirety and replaced with Schedule 2.01 to the Credit Agreement in the form attached hereto as Annex B.

Section 2. New Revolving Loan Commitments. On the Amendment Effective Date, the additional Revolving Commitments provided under Section 1 of this Amendment: (a) shall constitute New Revolving Loan Commitments provided under Section 2.15 of the Credit Agreement in the aggregate amount of $125,000,000; (b) shall be effective as of the Amendment Effective Date which shall also constitute an Increased Amount Date under Section 2.15 of the Credit Agreement; and (c) shall be further evidenced by the Credit Agreement and this Amendment which shall also constitute a Joinder Agreement with respect to any New Revolving Loan Lender designated in Section 5 of this Amendment. On the Amendment Effective Date, the Lenders shall be deemed to have entered into such assignments and purchases as are required pursuant to Section 2.15 in order that the Revolving Loans are held ratably by existing Revolving Loan Lenders and New Revolving Loan Lenders in accordance with their Revolving Commitments after giving effect to the addition of the New Revolving Loan Commitments. For the avoidance of doubt, from and after the Amendment Effective Date, the remaining amount of New Revolving Loan Commitments available under Section 2.15 of the Credit Agreement is $0.

Section 3. Representations and Warranties. Each of the Loan Parties represents and warrants to the Administrative Agent and the Lenders as of the Amendment Effective Date that:

(a) Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents is true and correct in all material respects (except where such representations and warranties are already qualified by materiality, in which case such representation and warranty shall be accurate in all respects) on and as of such 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 are true and correct in all material respects (except where such representations and warranties are already qualified by materiality, in which case such representation and warranty shall be accurate in all respects) as of such earlier date;

(b) No Default or Event of Default exists or has occurred and is continuing on and as of the Amendment Effective Date immediately before (in the case of the Original Credit Agreement) and immediately after (in the case of the Credit Agreement) giving effect to this Amendment. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform this Amendment and each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of this Amendment;

(c) This Amendment has been duly executed and delivered on behalf of each applicable Loan Party. This Amendment and the Credit Agreement constitute legal, valid and binding obligations of each Loan Party, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing;

(e) None of the execution, delivery and performance by each Loan Party of this Amendment and the Credit Agreement will: (i) contravene the terms of any of such Person's Organizational Documents; (ii) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted by Section 7.01 of the Credit Agreement) under (A) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (iii) violate any applicable Law; except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (ii) and (iii), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and

(f) No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Amendment or any other Loan Document executed in connection with this Amendment.

Section 4. Conditions to Effectiveness. The effectiveness of this Amendment shall be subject to the satisfaction of the following conditions precedent (the date upon which all such conditions are satisfied being the "Amendment Effective Date"):

(a) The Administrative Agent shall have received counterparts of this Amendment that, when taken together, bear the signatures of (A) Holdings, (B) the Borrower, (C) each other Loan Party and (D) the Lenders;

(b) Each Loan Party shall have provided the Administrative Agent with customary opinions, officer's certificates and resolutions pertaining to this Amendment, each in form and substance reasonably satisfactory to Administrative Agent;

(c) If requested by any Lender, Borrower shall have executed a Revolving Loan Note evidencing such Lender's Revolving Commitment;

(d) The Borrowers shall have paid to the Administrative Agent, for the ratable benefit of the applicable Lenders accepting New Revolving Loan Commitments, 0.50% on the New Revolving Loan Commitments accepted by such Lender under this Amendment (as specified in Annex C hereto);

(e) The Borrowers shall have paid or reimbursed Administrative Agent for all other fees and expenses required to be paid on the Amendment Effective Date including the reasonable out-of-pocket expenses incurred by Administrative Agent in connection with this Amendment pursuant to Section 10.04 of the Credit Agreement; and

(f) If requested by Administrative Agent or any Lender, a Beneficial Ownership Certification and customary "Know Your Customer" information shall have been provided by Loan Parties.

Section 5. New Revolving Loan Lender. In consideration of the terms and conditions set forth in this Amendment and the Credit Agreement, Truist Bank, as a New Revolving Loan Lender, agrees as follows: (a) such New Revolving Loan Lender acknowledges and agrees that upon its execution of this Amendment that such New Revolving Loan Lender shall become a "Lender" under, and for all purposes of, the Credit Agreement and the other Loan Documents, and shall be subject to and bound by the terms thereof, and shall perform all the obligations of and shall have all rights of a Lender thereunder; (b) such New Revolving Lender hereby agrees to commit to provide its Revolving Commitment as set forth on Annex B hereto; and (c) such New Revolving Loan Lender: (i) confirms that it has received a copy of the Credit Agreement and the other Loan Documents, together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Amendment and the Credit Agreement, that it is sophisticated with respect to decisions to make loans similar to those contemplated to be made under the Credit Agreement, and it is experienced in making loans of such type; (ii) agrees that it will, independently and without reliance upon Administrative Agent or any other Lender or Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement; (iii) appoints and authorizes Administrative Agent and Collateral Agent to take such action as agent on its behalf and to exercise such powers under the Credit Agreement and the other Loan Documents as are respectively delegated to Administrative Agent and Collateral Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (iv) agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

Section 6. Counterparts. This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Amendment or any document or instrument delivered in connection herewith by facsimile transmission or electronic PDF shall be effective as delivery of a manually executed counterpart of this Amendment or such other document or instrument, as applicable.

Section 7. Applicable Law. THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 8. Headings. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Section 9. Effect of Amendment. Except as expressly set forth herein, this Amendment shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Original Credit Agreement or any other provision of the Original Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. As of the Amendment Effective Date, each reference in the Original Credit Agreement to "*this Agreement*," "*hereunder*," "*hereof*," "*herein*," or words of like import, and each reference in the other Loan Documents to the Original Credit Agreement (including, without limitation, by means of words like "*thereunder*," "*thereof*" and words of like import), shall mean and be a reference to the Credit Agreement, and this Amendment and the Original Credit Agreement shall be read together and construed as a single instrument. This Amendment shall constitute a Loan Document.

Section 10. Acknowledgement and Affirmation. Each Loan Party hereto hereby expressly acknowledges that (i) all of its obligations under the Guaranty, the Collateral Documents and the other Loan Documents to which it is a party are hereby reaffirmed and remain in full force and effect on a continuous basis, (ii) its grant of security interests pursuant to the Collateral Documents is hereby reaffirmed and remains in full force and effect after giving effect to this Amendment, and (iii) except as expressly set forth herein, the execution of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or Lenders, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

[*Signature pages follow*.]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to ABL Credit Agreement to be duly executed as of the date first above written.

BIG RIVER STEEL LLC, as the Borrower

By: /s/ Ari Levy
Name: Ari Levy
Title: Chief Financial Officer

BRS INTERMEDIATE HOLDINGS LLC, as Holdings

By: /s/ Ari Levy
Name: Ari Levy
Title: Chief Financial Officer

BRS FINANCE CORP.

By: /s/ Ari Levy
Name: Ari Levy
Title: Chief Financial Officer

GOLDMAN SACHS BANK USA,
as Administrative Agent, Collateral Agent and a Lender

By: /s/ Jacob Elder
Name: Jacob Elder
Title: Authorized Signatory

[Signature Page to First Amendment to ABL Credit Agreement]

BANK OF AMERICA, N.A.
as a Lender and Issuing Bank

By: /s/ Diana L Guzzo
Name: Diana L Guzzo
Title: VP

[Signature Page to First Amendment to ABL Credit Agreement]

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Chance Hausler
Name: Chance Hausler
Title: Director

[Signature Page to First Amendment to ABL Credit Agreement]

BMO HARRIS BANK N.A.,
as a Lender

By: /s/ Quinn Heiden
Name: Quinn Heiden
Title: Managing Director

[Signature Page to First Amendment to ABL Credit Agreement]

Truist Bank,
as a Lender

By: /s/ Mark Fidati
Name: Mark Fidati
Title: Managing Director

[Signature Page to First Amendment to ABL Credit Agreement]

FIRST SECURITY BANK,
as a Lender

By: /s/ Brad Edwards
Name: Brad Edwards
Title: President

[Signature Page to First Amendment to ABL Credit Agreement]

ANNEX A

First Amendment Conformed Credit Agreement

Annex A
Conformed to the First Amendment
Execution Version

$350,000,000
ABL CREDIT AGREEMENT

Dated as of August 23, 2017

among

BIG RIVER STEEL LLC,
as the Borrower,

BRS INTERMEDIATE HOLDINGS LLC,
as Holdings,

GOLDMAN SACHS BANK USA,
as Administrative Agent and Collateral Agent,

and

THE OTHER LENDERS PARTY HERETO

GOLDMAN SACHS BANK USA, BMO HARRIS BANK, N.A,
WELLS FARGO BANK, N.A. and BANK OF AMERICA, N.A., as Joint Lead Arrangers and
Joint Bookrunners

and

GOLDMAN SACHS BANK USA,
as Sole Syndication Agent

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Administrative Agent and Other Agents

Article X

Miscellaneous

SCHEDULES

EXHIBITS

Form of

ABL CREDIT AGREEMENT

This ABL CREDIT AGREEMENT (this "**Agreement**") is entered into as of August 23, 2017 by and among BIG RIVER STEEL LLC, a Delaware limited liability company (the "**Borrower**"), BRS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings, GOLDMAN SACHS BANK USA ("**Goldman Sachs**"), as administrative agent (in such capacity, including any successor thereto, the " **Administrative Agent**") and collateral agent (in such capacity, including any successor thereto, the "**Collateral Agent**"), under the Loan Documents, and each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**").

PRELIMINARY STATEMENTS

The Borrower has requested that the Lenders extend certain credit facilities and commit to issue certain letters of credit to the Borrower in an aggregate principal amount of the Revolving Commitments.

On the Closing Date, the Borrower will enter into (a) the Senior Secured Notes Indenture pursuant to which the Borrower will issue the Senior Secured Notes in an aggregate principal amount of $600.0 million and (b) the Term Credit Agreement pursuant to which the Term Lenders will extend credit to the Borrower in an aggregate principal amount of $400.0 million.

The proceeds of the Loans made on the Closing Date, if any, together with the proceeds of the Senior Secured Notes, the Term Facility and cash on hand, will be used on the Closing Date (i) to repay the Closing Date Refinanced Indebtedness, (ii) to pay the Transaction Expenses and for (iii) amounts required for working capital and other general corporate purposes of the Loan Parties.

The Lenders have indicated their willingness to lend on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements 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 (including the introductory paragraph hereof and the preliminary statements hereto), the following terms have the meanings set forth below:

"**ABL Intercreditor Agreement**" shall mean that certain Intercreditor Agreement, dated as of the Closing Date between the Pari Collateral Agent, the Collateral Agent, the Equipment Lessor, the Commercial Building Lender, and acknowledged by the Loan Parties, which agreement is substantially in the form of Exhibit G-1, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"ABL Priority Collateral" has the meaning assigned to "ABL Priority Collateral" in the ABL Intercreditor Agreement.

"**Account**" as defined in Article 9 of the UCC as in effect from time to time in the State of New York.

"**Account Debtor**" means any Person obligated on an Account.

"**Acquired Indebtedness**" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

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

"**Act 9 Bond Documents**" means (a) the Act 9 Trust Indenture, (b) the Act 9 Lease Agreement, and (c) that certain Payment in Lieu of Taxes Agreement dated as of April 30, 2015, between Osceola and the Borrower and all other documents executed in connection therewith, as the same may be amended, restated, supplemented or otherwise modified from time to time (provided that any amendment, restatement, supplement or other modification that is materially adverse to the Lenders shall require the written consent of the Administrative Agent, it being agreed that any amendment that has the effect of adding property will not be deemed materially adverse).

"**Act 9 Bonds**" means the bonds issued to Top Parent and assigned to Holdings under the Act 9 Trust Indenture pursuant to Amendment 65 to the Constitution of State of Arkansas and Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, codified as Ark. Code Ann. Sections 14,164-201 *et seq*. as amended.

"**Act 9 Lease Agreement**" means that certain Lease Agreement dated as of April 30, 2015, between Osceola and the Borrower, as the same may be amended, restated, supplemented or otherwise modified from time to time (provided that any amendment, restatement, supplement or other modification that is materially adverse to the Lenders shall require the written consent of the Administrative Agent, it being agreed that any amendment that has the effect of adding property will not be deemed materially adverse).

"**Act 9 Trust Indenture**" means that certain Trust Indenture dated as of April 30, 2015, between Osceola, as issuer, and Regions Bank, as trustee for Holdings as the owner of the Act 9 Bonds issued thereunder, as the same may be amended, restated, supplemented or otherwise modified from time to time (provided that any amendment, restatement, supplement or other modification that is materially adverse to the Lenders shall require the written consent of the Administrative Agent, it being agreed that any amendment that has the effect of adding property will not be deemed materially adverse).

"**Administrative Agent**" has the meaning specified in the introductory paragraph to this Agreement.

"**Administrative Agent Account**" means any deposit account designated by the Administrative Agent as the "Administrative Agent Account" by written notice to the Borrower.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by 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 purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlling*," "*controlled by*" and "*under common control with*"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Affiliate Transaction**" has the meaning specified in Section 7.07.

"**Agent**" means each of (a) Administrative Agent, (b) Syndication Agent,

(c) Collateral Agent, (d) each Arranger, (e) the Supplemental Administrative Agents, if any and
(f) any other Person appointed under the Loan Documents to serve in an agent or similar capacity and "**Agents**" means each Agent collectively.

"**Agent Parties**" has the meaning specified in Section 10.02(4).

"**Agent-Related Persons**" means the Agents together with their respective Affiliates, and the officers, directors, employees, agents, attorneys-in-fact, partners, trustees and advisors of such Persons and of such Persons' Affiliates.

"**Aggregate Commitments**" means the Commitments of all the Lenders.

"**Agreement**" means this Credit Agreement, as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

"**AHYDO Payment**" means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is intended or designed to cause such Indebtedness not to be treated as an "applicable high yield discount obligation" within the meaning of Section 163(i) of the Code.

"**Annual Financial Statements**" means the audited consolidated balance sheets and related audited consolidated statements of income, changes in members' deficit and cash flows of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2015 and December 31, 2016.

"**Anti-Corruption Laws**" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"**Anti-Money Laundering Laws**" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"**Applicable Commitment Fee Rate**" means, on any day, with respect to the commitment fees payable hereunder at any time, the Applicable Commitment Fee Rate per annum set forth below, based upon the Quarterly Average Facility Utilization for the fiscal quarter most recently ended prior to such day:

Category	Quarterly Average Facility Utilization	Applicable Commitment Fee Rate
Category 1	≥ 50%	0.25%
Category 2	< 50%	0.375%

The Applicable Commitment Fee Rate (a) shall be the Applicable Commitment Fee Rate per annum set forth in Category 2 above through and including the last day of the first full fiscal quarter commencing after the Closing Date and (b) thereafter, shall be determined at the commencement of each subsequent fiscal quarter on the basis of the Quarterly Average Facility Utilization for the immediately preceding fiscal quarter, with any changes to the Applicable Commitment Fee Rate resulting from a change in Quarterly Average Facility Utilization becoming effective on the first day of each such fiscal quarter.

"**Applicable Margin**" means, on any day, with respect to any Base Rate Loan or Eurodollar Rate Loan, the Applicable Margin per annum set forth below under the caption "Applicable Margin for Base Rate Loans" or "Applicable Margin for Eurodollar Rate Loans," as the case may be, based upon the Quarterly Average Excess Availability for the fiscal quarter most recently ended prior to such day:

Category	Quarterly Average Excess Availability	Applicable Margin for Base Rate Loans	Applicable Margin for Eurodollar Rate Loans
Category 1	≥ 66%	0.75%	1.75%
Category 2	≥ 33% but < 66%	1.00%	2.00%
Category 3	< 33%	1.25%	2.25%

The Applicable Margin (a) shall be the Applicable Margin per annum set forth in Category 2 above through and including the last day of the first full fiscal quarter commencing after the Closing Date and (b) thereafter, shall be determined at the commencement of each subsequent fiscal quarter on the basis of the Quarterly Average Excess Availability for the immediately preceding fiscal quarter, with any changes to the Applicable Margin resulting from a change in Quarterly Average Excess Availability becoming effective on the first day of each such fiscal quarter; provided that the Applicable Margin shall be deemed to be the Applicable Margin per annum set forth in Category 3 above (i) if the Borrower shall have failed to deliver any Borrowing Base Certificate required to have been delivered by it hereunder prior to the commencement of such fiscal quarter with respect to the calculation of the Borrowing Base as in effect from time to time during the immediately preceding fiscal quarter, until the earlier of (A) the first Business Day after the delivery thereof permitting calculation of the Quarterly Average Excess Availability for the immediately preceding fiscal quarter and (B) the last day of such fiscal quarter (and thereafter the Applicable Margin shall be determined in accordance with the other provisions hereof) and (ii) if the Borrower shall have failed to deliver any Borrowing Base Certificate when required, at the request of the Administrative Agent or the Required Lenders and until the earlier of (A) the delivery thereof and (B) the last day of such fiscal quarter (and thereafter the Applicable Margin shall be determined in accordance with the other provisions hereof). If any Borrowing Base Certificate shall prove to have been inaccurate, and such inaccuracy shall have resulted in the payment of interest hereunder at rates lower than those that were in fact applicable for any period had there been no such inaccuracy, then (x) the Borrower shall promptly deliver to the Administrative Agent a corrected Borrowing Base Certificate for the applicable period and (y) the Borrower shall promptly pay to the Administrative Agent, for distribution to the Lenders at such time, the accrued interest and letter of credit fees that should have been paid but was not paid as a result of such inaccuracy, and, if such payment is made, any Default that shall have occurred solely on account of the failure of Borrower to pay interest when due as a result of such inaccuracy shall be automatically waived without any further action by the Administrative Agent and the Lenders. Nothing in this paragraph shall limit the rights of the Administrative Agent or any Lender under Section 8.

"**Appropriate Lender**" means, at any time, with respect to Loans of any Class, the Lenders of such Class.

"**Approved Fund**" means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

"**Arrangers**" means each of (i) Goldman Sachs Bank USA, in its capacities as joint lead arranger and joint bookrunner under this Agreement, (ii) BMO Harris Bank, N.A., in its capacities as joint lead arranger and joint bookrunner under this Agreement, (iii) Wells Fargo Bank, N.A., in its capacities as joint lead arranger and joint bookrunner under this Agreement, and (iv) and Bank of America, N.A., in its capacities as joint lead arranger and joint bookrunner under this Agreement.

"**Asset Sale**" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions of property or assets (including by way of a Sale-Leaseback Transaction, other than a Specified Sale-Leaseback Transaction) of the Borrower or any Restricted Subsidiary (each referred to in this definition as a "**disposition**"); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 7.02) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of:

(i) Cash Equivalents or Investment Grade Securities,

(ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course,

(iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Borrower),

(iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and

(v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Borrower and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(b) the disposition of all or substantially all of the assets of the Borrower in a manner permitted pursuant to Section 7.03(4);

(c) any disposition in connection with the making of any Restricted Payment that is permitted to be made, and is made, under Section 7.05, any Permitted Investment or any acquisition otherwise permitted under this Agreement;

(d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value for any individual transaction or series of related transactions of less than $5.0 million;

(e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a Restricted Subsidiary to a Restricted Subsidiary (and in the event such disposition of property or assets or issuance of securities was made by a Loan Party, such disposition of property or assets or issuance of securities is made to a Loan Party);

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

(g) (i) the lease or sublease, assignment, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice, (ii) the lease or sub-lease, assignment, license or sublicense of, or co-location arrangement relating to, any real or other property of the Borrower and its Restricted Subsidiaries for the purpose of facilitating the use by other Persons of such real or other property in connection with the conduct by such other Persons (or their affiliates) of a Similar Business and, in connection with which, the Borrower or a Restricted Subsidiary or a Parent Company enters into a contract or arrangement with such other Person for the sale or acquisition of products or services, and (iii) the exercise of termination rights with respect to any lease, sub-lease, assignment, license or sublicense or other agreement or arrangement;

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

(i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets or the granting of Liens not prohibited by this Agreement;

(j) to the extent that following have been excluded from the Borrowing Base, the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;

(k) any financing transaction with respect to property built or acquired by the Borrower or any Restricted Subsidiary after the Closing Date,

(l) to the extent the following are not then included in the Borrowing Base, the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof;

(m) the licensing or sublicensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice;

(n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;

(o) the unwinding of any Hedging Obligations;

(p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;

(r) the granting of a Permitted Lien;

(s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law;

(t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder;

(u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of the same or similar replacement property;

(v) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction; and

(w) dispositions of property in connection with any Specified Sale-Leaseback Transaction.

"**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 D-1 or any other form approved by the Administrative Agent.

"**Assignment Effective Date**" as defined in Section 10.07(2).

"**Attorney Costs**" means all reasonable fees, expenses and disbursements of any law firm or other external legal counsel, to the extent documented in reasonable detail and invoiced.

"**Attributable Indebtedness**" means, on any date, in respect of any Capitalized Lease Obligation or Sale-Leaseback Transaction of any Person, (i) in the case of a Capitalized Lease Obligation or a Sale-Leaseback Transaction that constitutes a Capitalized Lease Obligation, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP, or (ii) in the case of a Sale-Leaseback Transaction that does not constitute a Capitalized Lease Obligation, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for 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 or may, at the option of the lessor, be extended determined in accordance with GAAP.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA 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**" has the meaning specified in Section 8.02.

"**Base Rate**" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate *plus* 1/2 of 1%, (b) the rate of interest in effect for such day as announced from time to time by the Administrative Agent as its "prime rate" and (c) the Eurodollar Rate on such day for an Interest Period of one (1) month *plus* 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day). The "prime rate" is a rate set by the Administrative Agent based upon various factors including the Administrative Agent's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such announced rate. Any change in such rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the announcement of such change.

"**Base Rate Loan**" means a Loan that bears interest based on the Base Rate.

"**Basket**" means any amount, threshold or other value permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction value, judgment or other amount under any provision in Articles V, VI, VII or VIII and the definitions related thereto.

"**Benchmark Replacement**" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the Eurodollar 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 zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the Eurodollar Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Eurodollar Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Eurodollar Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

"**Benchmark Replacement Conforming Changes**" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent, in consultation with the Borrower, decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent, in consultation with the Borrower, 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 Eurodollar 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 Eurodollar Rate permanently or indefinitely ceases to provide the Eurodollar 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 Eurodollar Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the Eurodollar Rate announcing that such administrator has ceased or will cease to provide the Eurodollar 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 Eurodollar Rate;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of the Eurodollar Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Eurodollar Rate, a resolution authority with jurisdiction over the administrator for the Eurodollar Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Eurodollar Rate, which states that the administrator of the Eurodollar Rate has ceased or will cease to provide the Eurodollar 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 Eurodollar Rate; or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the Eurodollar Rate announcing that the Eurodollar 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 Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

"**Benchmark Unavailability Period**" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Eurodollar Rate and solely to the extent that the Eurodollar Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the Eurodollar Rate for all purposes hereunder in accordance with Sections 3.03(b) through 3.03(e) and (y) ending at the time that a Benchmark Replacement has replaced the Eurodollar Rate for all purposes hereunder pursuant to Sections 3.03(b) through 3.03(e).

"**Beneficial Ownership Certification**" means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"**Beneficial Ownership Regulation**" means 31 C.F.R. § 1010.230.

"**Board of Directors**" means, for any Person, the board of directors, board of managers, or other governing body of such Person or, if such Person does not have such a board of directors, board of managers or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, "Board of Directors" means the Board of Directors of Top Parent.

"**Borrower**" has the meaning specified in the introductory paragraph to this Agreement. Upon the consummation of any transaction permitted by Section 7.03(4), "Borrower" shall mean the Successor Borrower.

"**Borrower Materials**" has the meaning specified in Section 6.02.

"**Borrower Parties**" means the collective reference to the Borrower and each Subsidiary Guarantor and "**Borrower Party**" means any of them.

"**Borrowing**" means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Rate Loans, having the same Interest Period.

"**Borrowing Base**" means, at any time, an amount equal to the sum of the following amounts:

(i) 85% of Eligible Accounts of the Borrower Parties; plus

(ii) with respect to the Eligible Inventory of the Borrower Parties consisting of raw materials, an amount equal to the lesser of (x) the product of (A) 85% multiplied by (B) the applicable Net Recovery Percentage with respect to Inventory consisting of raw materials multiplied by (C) the Inventory Value of such Eligible Inventory consisting of raw materials at such time and (y) the product of (A) 75% multiplied by (B) the Inventory Value of the Eligible Inventory of the Borrower consisting of raw materials at such time; plus

(iii) with respect to the Eligible Inventory of the Borrower Parties consisting of work-in-process or semi-finished goods, an amount equal to the lesser of (x) the product of (A) 85% multiplied by (B) the applicable Net Recovery Percentage with respect to Inventory consisting of work-in-process multiplied by (C) the Inventory Value of such Eligible Inventory consisting of work-in-process at such time and (y) the product of (A) 75% multiplied by (B) the Inventory Value of the Eligible Inventory of the Borrower consisting of work-in-process at such time; plus

(iv) with respect to the Eligible Inventory of the Borrower Parties consisting of finished goods, an amount equal to the lesser of (x) the product of (A) 85% multiplied by (B) the applicable Net Recovery Percentage with respect to Inventory consisting of finished goods multiplied by (C) the Inventory Value of such Eligible Inventory consisting of finished goods at such time and (y) the product of (A) 75% multiplied by (B) the Inventory Value of the Eligible Inventory of the Borrower consisting of finished goods at such time; minus

(v) an amount equal to 5% (such percentage the "**Availability Block Percentage**") of the Borrowing Base in effect at such time (the amount that the Borrowing Base is reduced by this clause (v) shall be excluded in such calculation of the Borrowing Base in effect at such time); minus

(vi) all Reserves, if any, then in effect;

provided that the Availability Block Percentage shall decrease to 0% on the date on which (which shall be no earlier than the first anniversary of the Closing Date) the following conditions are satisfied: (x) no Default or Event of Default shall have occurred and be continuing and (y) the Administrative Agent shall have received and be satisfied with (in addition to the Closing A/R Field Examination and Closing Inventory Appraisal, which shall have been delivered prior to the Closing Date) a field examination report, an Inventory appraisal and an updated Borrowing Base Certificate reflecting the results of such field examination and Inventory appraisal and any Reserves the Administrative Agent may wish to establish in its Permitted Discretion.

The Administrative Agent will have the right to establish and modify Reserves, in its Permitted Discretion, in accordance with Section 2.17. Subject to the immediately preceding sentence and the other provisions hereof expressly permitting the Administrative Agent to adjust the Borrowing Base or any component thereof, the Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(6) (or, prior to the first such delivery, the Borrowing Base Certificate referred to in Section 4.01(1)(h)).

"**Borrowing Base Certificate**" means a borrowing base certificate reflecting the Borrowing Base for the Borrowing Base Reporting Date most recently ended in form reasonably satisfactory to the Administrative Agent (with such changes thereto as may be reasonably required by the Administrative Agent from time to time to reflect the components of, and Reserves against, the Borrowing Base as provided for hereunder), together with all attachments and supporting documentation contemplated thereby, signed and certified as accurate and complete by a Financial Officer of the Borrower.

"**Borrowing Base Reporting Date**" means (a) the end of each calendar month or (b) during any Weekly Reporting Period, the last day of each week.

"**Broker-Dealer Regulated Subsidiary**" means any Subsidiary of the Borrower that is registered as a broker-dealer under the Exchange Act or any other applicable Laws requiring such registration.

"**Business Day**" means any day that is not a Legal Holiday and, with respect to any interest rate settings as to a Eurodollar Rate Loan, any fundings, disbursements, settlements and payments in respect of any such Eurodollar Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Eurodollar Rate Loan, any day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market.

"**Canadian Dollars**" means the lawful currency of Canada.

"**CapEx Equity**" means Capital Stock of the Borrower issued to Holdings, the Net Proceeds from the issuance of which, and other cash equity capital contributions by Holdings to the Borrower, the Net Proceeds of which, are used for purposes of Expansion Capital Expenditures.

"**Capital Expenditures**" means all expenditures made by the Borrower, a Subsidiary Guarantor or a Restricted Subsidiary, as applicable, for the acquisition, leasing (pursuant to a capital lease of fixed or capital assets), construction, development or improvement of assets or additions to equipment (including replacement, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries.

"**Capital Stock**" means:

(1) in the case of a corporation, corporate stock or shares in the capital of such corporation;

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

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

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person,

but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock;

"**Capitalized Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP; *provided* that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "**ASU**") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01.

"**Capitalized Software Expenditures**" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

"**Captive Insurance Subsidiary**" means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

"**Cash**" means money, currency or a credit balance in any demand or Deposit Account.

"**Cash Collateralize**" means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) Cash collateral in Dollars (or, if Administrative Agent and Issuing Bank agree in their sole discretion, other credit support), at a location and pursuant to documentation in form and substance satisfactory to Administrative Agent and Issuing Bank (and "**Cash Collateralization**" has a corresponding meaning). "**Cash Collateral**" shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash collateral and other credit support.

"**Cash Dominion Period**" means each period (a) commencing on the fifth consecutive Business Day when Excess Availability shall be less than the greater of (i) 10.0% of the Line Cap and (ii) $13,000,000 or (b) commencing on any day when a Specified Event of Default shall have occurred and be continuing and (c) ending on (i) if a Cash Dominion Period has commenced pursuant to clause (a) above, the day on which the Excess Availability shall be greater than the greater of (A) 10.0% of the Line Cap and (B) $13,000,000 for at least 20 consecutive days (measured from, with respect to the Borrowing Base, the first Borrowing Base Reporting Date with respect to which Excess Availability exceeded the greater of 10.0% of the Line Cap and $13,000,000) and (ii) if a Cash Dominion Period has commenced pursuant to clause (b) above, the day on which no Specified Events of Default exist for at least 20 consecutive days; provided, however, if a Cash Dominion Period is the fourth such period in any 12 month period or the seventh such period since the Closing Date, then, notwithstanding anything herein to the contrary, such Cash Dominion Period shall be deemed to exist and continue at all times thereafter.

"**Cash Equivalents**" means:

(1) Dollars;

(2) (a) Euros, Yen, Canadian Dollars, Sterling or any national currency of any participating member state of the EMU;

(b) in the case of any Foreign Subsidiary or any jurisdiction in which the Borrower or any Restricted Subsidiary conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) and in each case maturing within 36 months after the date of acquisition thereof;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition thereof;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA-(or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts, except amounts used to pay non-Dollar denominated obligations of the Borrower or any Restricted Subsidiary in the ordinary course of business, are converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"**Cash Management Agreement**" means any agreement entered into from time to time by the Borrower or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"**Cash Management Services**" means (a) commercial credit cards, employee credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft protections, automatic clearing house arrangements and fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services, (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements and (e) any other related services or activities.

"**Cash Management Services Provider**" means any Person that (a) is, or was on the Closing Date, an Agent, the Arrangers or any Affiliate of any of the foregoing, whether or not such Person shall have been an Agent, the Arrangers or any Affiliate of any of the foregoing at the time the applicable agreement in respect of Cash Management Services was entered into, (b) is a counterparty to an agreement in respect of Cash Management Services in effect on the Closing Date and is a Lender or an Affiliate of a Lender as of the Closing Date or (c) becomes a counterparty after the Closing Date to an agreement in respect of Cash Management Services at a time when such Person is a Lender or an Affiliate of a Lender.

"**Casualty Event**" means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"**CFC**" means a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"**CFC Holdco**" means a Domestic Subsidiary substantially all of whose assets consists (directly or indirectly through disregarded entities) of the Capital Stock or indebtedness (in the case of indebtedness, to the extent such indebtedness is treated as equity for U.S. federal income tax purposes) of one or more Subsidiaries that are CFCs.

"**Change**" has the meaning specified in Section 2.17.

"**Change in Law**" means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Closing Date of a law, rule, regulation or treaty adopted prior to the Closing Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) 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 regulatory authorities, in each case pursuant to Basel III, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Closing Date.

"**Change of Control**" means the occurrence of any of the following after the Closing Date:

(1) the sale, lease, transfer, conveyance or other disposition in one or a series of related transactions (other than by merger, consolidation, amalgamation or business combination) of all or substantially all of the assets of Holdings or the Borrower and its Subsidiaries, in each case, taken as a whole, to any Person;

(2) at any time prior to the consummation of the first public offering of the common equity of any Parent Company after the Closing Date, the Permitted Holders ceasing to beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), in the aggregate, directly or indirectly, at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower;

(3) at any time following the consummation of the first public offering of the common equity of any Parent Company after the Closing Date, (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of Equity Interests of the Borrower representing more than thirty-five percent (35%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Equity Interests held by any Permitted Holder will be excluded);

(4) any "Change of Control" (or any comparable term) in any document pertaining to the Senior Secured Notes, the Term Loan or any Refinancing Indebtedness thereof, in each case with an aggregate outstanding principal amount in excess of the Threshold Amount; or

(5) the Borrower ceases to be directly or indirectly wholly owned by Holdings;

unless, in the case of clause (2) or (3) above, the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of the Borrower.

"**Class**" means (a) with respect to Lenders, each of the Lenders having Revolving Exposure (including Swing Line Lender) and (b) with respect to Loans, Revolving Loans (including Swing Line Loans and Protective Advances).

"**Closing A/R Field Examination**" means the initial field examination report of the Accounts owned by the Borrower (in final form and prepared by a third party appraisal firm selected by the Administrative Agent). The Closing A/R Field Examination shall be conducted at the sole cost and expense of the Borrower and shall be in addition to any other field examinations and appraisals permitted under this Agreement.

"**Closing Inventory Appraisal**" means the initial inventory report of the Borrower's Inventory (in final form and prepared by a third party appraisal firm selected by the Administrative Agent). The Closing Inventory Appraisal shall be conducted at the sole cost and expense of the Borrower and shall be in addition to any other appraisals permitted under this Agreement.

"**Closing Date**" means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"**Closing Date Refinancing**" means the repayment of all outstanding Indebtedness under all of the Indebtedness described on Schedule 1.01(1) (such Indebtedness, the "**Closing Date Refinanced Indebtedness**") (it being understood that letters of credit may remain outstanding to the extent collateralized or backstopped pursuant to this Agreement on the Closing Date).

"**Closing Date Refinanced Indebtedness**" has the meaning assigned to such term in the definition of "Closing Date Refinancing".

"**Closing Date Loans**" means the Loans made by the Lenders on the Closing Date to the Borrower pursuant to Section 2.01.

"**Closing Date Term Loans**" means the Term Loans made by the Term Lenders on the Closing Date to the Borrower pursuant to Term Credit Agreement.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended, and any successor federal Tax statute (unless otherwise specified in this Agreement).

"**Co-Issuer**" means BRS Finance Corp., a Delaware corporation.

"**Collateral**" means all the "Collateral" (or equivalent term) as defined in any Collateral Document.

"**Collateral Access Agreement**" means any landlord waiver, warehouseman's letter, consignee agreement, bailee letter or other agreement, in form and substance reasonably satisfactory to the Collateral Agent (including with respect to waivers or subordinations of certain rights by such Persons), between the Collateral Agent and any landlord where any Inventory is located or any third party warehouser, consignee, bailee or other similar Person having the possession of any Inventory.

"**Collateral and Guarantee Requirement**" means, at any time, the requirement that:

(1) the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Closing Date pursuant to Section 4.01(2)(a) or (b) pursuant to the Security Agreement or Section 6.11 or 6.13 at such time required by the Security Agreement or by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

(2) all Obligations shall have been unconditionally guaranteed by (a) Holdings (or any successor thereto), (b) each Restricted Subsidiary of the Borrower (other than any Excluded Subsidiary), which as of the Closing Date shall include those that are listed on Schedule 1.01(2) hereto and (c) any Restricted Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) any Pari Passu Lien Obligations or any Subordinated Indebtedness (the Persons in the preceding clauses (a) through (c) collectively, the "**Guarantors**");

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest, subject only to Permitted Liens, in

(a) (i) all the Equity Interests of the Borrower and (ii) all the common Equity Interests of Holdings,

(b) all Equity Interests of each direct, wholly owned Domestic Subsidiary (other than any CFC Holdco) that is directly owned by any Loan Party, and

(c) 65% of the issued and outstanding Equity Interests of each class of each (i) wholly owned Domestic Subsidiary that is (a) a CFC Holdco and (b) directly owned by a Loan Party and (ii) wholly owned Foreign Subsidiary that is directly owned by a Loan Party;

(4) except to the extent otherwise provided hereunder or under any Collateral Document, including subject to Permitted Liens, and in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents, the Obligations and the Guaranty shall have been secured by a security interest in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts), inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing (in each case, other than Excluded Assets), in each case,

(a) that has been perfected (to the extent such security interest may be perfected) by

(i) delivering certificated securities and instruments, in which a security interest can be perfected by physical control, in each case to the Collateral Agent (or the Pari Collateral Agent as bailee for the Collateral Agent pursuant to the ABL Intercreditor Agreement, if applicable) to the extent required hereunder or the Security Agreement;

(ii) filing financing statements under the Uniform Commercial Code of any applicable jurisdiction, or

(iii) making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office, or

(b) with the priority required by the Collateral Documents; *provided* that any such security interests in the Collateral shall be subject to the terms of the ABL Intercreditor Agreement.

No actions required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect or make enforceable such security interests in any assets (including any intellectual property registered or applied for in any non-U.S. jurisdiction) (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). There shall be no (x) Guaranties governed under the laws of any non-U.S. jurisdiction or (y) requirement to perfect a security interest in any letter of credit rights, other than by the filing of a UCC financing statement.

"**Collateral Documents**" means, collectively, the Security Agreement, the Top Parent Pledge Agreement, the Intellectual Property Security Agreements, the Control Agreements, each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(2), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"**Collateral Trust Agreement**" means that certain Collateral Trust Agreement dated as of the Closing Date, among the Pari Collateral Agent, the Term Agent, the Trustee, Commercial Building Lender, the Equipment Lessor, each other Debt Representative with respect to Pari Passu Lien Obligations from time to time party thereto and the Loan Parties, which agreement is substantially in the form of Exhibit G-2, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Collection Deposit Accounts**" as defined in Section 6.18(1).

"**Collection Lockboxes**" as defined in Section 6.18(1).

"**Commercial Building Lender**" means First Security Bank, an Arkansas banking corporation, together with its permitted successors and assigns in such capacity.

"**Commitment**" means any Revolving Commitment.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. §1 et. seq.), as amended from time to time and any successor statute.

"**Compliance Certificate**" means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower:

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1)), and

(2) setting forth detailed calculations of the Fixed Charge Coverage Ratio as would be calculated under each alternative in the definition thereof; provided, that such calculation of the Fixed Charge Coverage Ratio for purposes of demonstrating compliance with Section 7.12 shall not be required except during a Covenant Period or pursuant to Section 4.2(6).

"**Consolidated Depreciation and Amortization Expense**" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and the amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"**Consolidated EBITDA**" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h), (l) and (n)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers' acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of "Consolidated Interest Expense" pursuant to the definition thereof; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise and similar taxes, and foreign withholding taxes paid or accrued during such period (including any other levies that replace or are intended to be in lieu of such taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of "Consolidated Net Income," and any payments to a Parent Company in respect of such taxes permitted to be made hereunder; *plus*

(c) Consolidated Depreciation and Amortization Expense for such period; *plus*

(d) any other non-cash charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Closing Date, in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation*; *plus*

(f) (i) the amount of board of director fees and any management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreements or otherwise to the extent permitted under Section 7.07 and (ii) the amount of payments made to optionholders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Companies, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; *plus*

(g) [reserved]; *plus*

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); *plus*

(j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of *FASB Accounting Standards Codification Topic 715—Compensation—Retirement Benefits*, and any other items of a similar nature, *plus*

(k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve (12) months after the end of such period; *plus*

(l) the amount of "run-rate" cost savings, synergies and operating expense reductions related to restructurings, cost savings initiatives or other initiatives that are projected by the Borrower in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within 24 months after the end of such period (which cost savings, synergies or operating expense reductions shall be calculated on a *pro forma* basis as though such cost savings, synergies or operating expense reductions had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that "run-rate" means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Closing Date) (which adjustments may be incremental to (but not duplicative of) pro forma cost savings, synergies or operating expense reduction adjustments made pursuant to Section 1.07); *provided* that such cost savings, synergies and operating expenses are reasonably identifiable and factually supportable; *plus*

(m) [reserved]; *plus*

(n) any payments in the nature of compensation or expense reimbursement made to independent board members; *plus*

(o) internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; *plus*

(p) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of); *plus*

(q) pre-startup expenses; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition),

(b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period, and

(c) any income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of).

For the avoidance of doubt, Consolidated EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.07.

"**Consolidated Interest Expense**" means, with respect to any Person for any period, without duplication, the sum of:

(a) cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than Non-Recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof); *plus*

(b) non-cash interest expense resulting solely from (a) the amortization of original issue discount from the issuance of Indebtedness of such Person and its Restricted Subsidiaries at less than par (excluding the Senior Secured Notes, the Closing Date Term Loans and any Indebtedness borrowed under the Facility in connection with the Transactions and any Non-Recourse Indebtedness), *plus* (b) pay-in-kind interest expense of such Person and its Restricted Subsidiaries payable pursuant to the terms of the agreements governing Indebtedness for borrowed money; excluding, in each case:

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (a) and (b) above (including as a result of the effects of acquisition method accounting or pushdown accounting),

(ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815, *Derivatives and Hedging*,

(iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates,

(iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness,

(v) "additional interest" owing pursuant to a registration rights agreement with respect to any securities,

(vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,

(vii) penalties and interest relating to taxes,

(viii) accretion or accrual of discounted liabilities not constituting Indebtedness,

(ix) interest expense attributable to a Parent Company resulting from push-down accounting,

(x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting,

(xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto in connection with any acquisition or Investment, and

(xii) annual agency fees paid to any administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness (including any security or collateral trust arrangements related thereto), including the Facility, the Term Facility and the Senior Secured Notes.

For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"**Consolidated Net Income**" means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and intellectual property development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost-savings initiatives; curtailments and modifications to pension and post-employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary and, solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period;

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Restricted Subsidiary (other than any Subsidiary Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Borrower reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation* or Accounting Standards Codification Topic 505-50, *Equity-Based Payments to Non-Employees*, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Senior Secured Notes and the syndication and incurrence of any Facilities (as defined in the Term Credit Agreement) or other Pari Passu Lien Obligations), issuance of Equity Interests (including by any direct or indirect parent of the Borrower), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Senior Secured Notes and other securities and any Facilities (as defined in the Term Credit Agreement) or other Pari Passu Lien Obligations) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, *Business Combinations*);

(12) accruals and reserves that are established or adjusted in connection with an Investment or an acquisition that are required to be established or adjusted as a result of such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—*Financial Instruments*;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation;

(17) any non-cash rent expense;

(18) [reserved];

(19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder.

Notwithstanding the foregoing, for the purpose of Section 7.05(a) (other than clause (3)(d) of Section 7.05(a)), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (3)(d) of Section 7.05(a).

"**Consolidated Secured Debt**" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien; *provided* that Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

"**Consolidated Total Debt**" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness; *provided* that Consolidated Total Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

"**Contingent Obligations**" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control Agreement**" means, with respect to any lockbox, deposit account or securities account maintained by any Loan Party, an irrevocable lockbox agreement or other control agreement in form and substance reasonably satisfactory to the Collateral Agent, duly executed and delivered by such Loan Party and the depositary bank that maintains such lockbox or the depositary bank or the securities intermediary with which such account is maintained, as applicable.

"**Controlled Investment Affiliate**" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower and/or other companies.

"**Conversion/Continuation Date**" means the effective date of a continuation or conversion, as the case may be, as set forth in the applicable Conversion/Continuation Notice.

"**Conversion/Continuation Notice**" means a Conversion/Continuation Notice substantially in the form of Exhibit A-2.

"**Convertible Indebtedness**" means Indebtedness of the Borrower (which may be guaranteed by the Guarantors) permitted to be incurred hereunder that is either (a) convertible into common equity of the Borrower (and cash in lieu of fractional shares) or cash (in an amount determined by reference to the price of such common equity) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common equity of the Borrower or cash (in an amount determined by reference to the price of such common equity).

"**Covenant Period**" has the meaning specified in Section 7.12.

"**Covered Party**" has the meaning assigned to such term in Section 10.27.

"**Credit Date**" means the date of a Credit Extension.

"**Credit Extension**" means the making of a Loan or the issuing of a Letter of Credit (or the amending of a Letter of Credit at the Borrower's request to extend the term or increase the amount of such Letter of Credit).

"**Cure Amount**" has the meaning specified in Section 8.04(1).

"**Cure Expiration Date**" has the meaning specified in Section 8.04(1)(a).

"**Debt Fund Affiliate**" means any Affiliate of an Investor that is a bona fide diversified debt fund that is not (a) a natural person or (b) Top Parent, any Parent Company, Holdings, the Borrower or any Subsidiary of the Borrower.

"**Debt Representative**" means, with respect to any series of Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"**Debtor Relief Laws**" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

"**Default Right**" has the meaning assigned to such term in Section 10.27.

"**Defaulting Lender**" means, subject to Section 2.16(2) any Lender that (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans, within one Business Day of the date required to be funded by it hereunder, (b) has failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, (c) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (d) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, or (e) has, or has a direct or indirect parent company that has, either (i) admitted in writing that it is insolvent or (ii) become subject to a Lender-Related Distress Event. Any determination by the Administrative Agent as to whether a Lender is a Defaulting Lender shall be conclusive absent manifest error.

"**Deposit Account**" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"**Deposit Agreement**" means a Security Deposit Agreement substantially in the form attached as Exhibit E to the Collateral Trust Agreement, to be entered into among the Loan Parties, the Pari Collateral Agent, the Collateral Agent and the Depositary Agent (as defined therein), as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Designated Cash Management Services Agreement**" means any agreement relating to Cash Management Services that is entered into between any Loan Party and a Cash Management Services Provider and that is designated as a "Designated Cash Management Services Agreement" in a writing from such Loan Party and such Cash Management Services Provider to the Administrative Agent in form and detail reasonably satisfactory to the Administrative Agent. Any such designation in writing from a Loan Party and the applicable Cash Management Services Provider (or any subsequent writing from a Loan Party and such Cash Management Services Provider to the Administrative Agent) may further designate any Designated Cash Management Services Agreement as being a "Designated Pari Cash Management Services Agreement" as defined under this Agreement; provided that in the event of any such further designation, such writing specifies the Designated Pari Amount with respect thereto.

"**Designated Cash Management Services Obligations**" means all obligations of every nature of the Loan Parties (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) arising in respect of Cash Management Services provided under any Designated Cash Management Services Agreement.

"**Designated Hedge Agreement**" means (a) any Hedge Agreement relating to commodity prices that is entered into between a Loan Party and a Lender Counterparty that is designated as a "Designated Hedge Agreement" in a writing from the Borrower and the applicable Lender Counterparty to the Administrative Agent in form and detail reasonably satisfactory to the Administrative Agent. Any such designation in writing from the Borrower and the applicable Lender Counterparty (or any subsequent writing from the Borrower and such Lender Counterparty to the Administrative Agent) may further designate any Designated Hedge Agreement as being a "Designated Pari Hedge Agreement" as defined under this Agreement; provided that in the event of any such further designation, such writing (x) specifies the Designated Pari Amount with respect thereto and (y) certificates that such Hedge Agreement does not constitute a "Designated Pari Hedge Agreement" pursuant to the terms of the Term Credit Agreement. Any such designation may be rescinded or terminated only by a writing executed by both the Borrower and the applicable Lender Counterparty.

"**Designated Hedge Obligations**" means all obligations of every nature of the Loan Parties under each Designated Hedge Agreement (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)), including obligations for interest (including interest that would continue to accrue pursuant to such Designated Hedge Agreement on any such obligation after the commencement of any proceeding under the Debtor Relief Laws with respect to any Loan Party, whether or not such interest is allowed or allowable against such Loan Party in any such proceeding), payments for early termination of such Hedge Agreement, fees, expenses and indemnification.

"**Designated Non-Cash Consideration**" means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration

"**Designated Pari Amount**" means, with respect to any Designated Cash Management Services Agreement or any Designated Hedge Agreement, an amount (up to the maximum possible amount of obligations of the Loan Parties thereunder) specified in a writing from the Borrower and the applicable Cash Management Services Provider or the applicable Lender Counterparty, as the case may be, to the Administrative Agent, which amount may be increased or decreased by further such written notice to the Administrative Agent from time to time.

"**Designated Pari Cash Management Services Agreement**" means each Designated Cash Management Services Agreement in respect of which the notice delivered to the Administrative Agent by the Borrower and the applicable Cash Management Services Provider confirms that such Designated Cash Management Services Agreement constitutes a "Designated Pari Cash Management Services Agreement" for all purposes hereof, including Section 2.13(2), so long as, on the date of such designation (or, in the event the Designated Pari Amount with respect thereto shall increase as contemplated by the definition of such term, on the date of effectiveness of such increase), the establishment of a Designated Pari Cash Management Services Reserve in the amount of the Designated Pari Amount with respect thereto would not result in the Total Utilization of Revolving Commitments exceeding the Borrowing Base then in effect (but after giving pro forma effect to the establishment of such Designated Pari Cash Management Services Reserve).

"**Designated Pari Cash Management Services Obligations**" means all obligations of every nature of the Loan Parties (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) arising in respect of Cash Management Services provided under any Designated Pari Cash Management Services Agreement.

"**Designated Pari Cash Management Services Reserve**" means, with respect to any Designated Pari Cash Management Services Agreement, the reserve that the Administrative Agent from time to time establishes in its Permitted Discretion as being reasonably appropriate to reflect the aggregate amount of Obligations in respect of such Designated Pari Cash Management Services Agreement. Without limiting the Administrative Agent's Permitted Discretion, a Designated Pari Cash Management Services Reserve at any time may be established by reference to the amount of such Obligations set forth in most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(6) (or, prior to the first such delivery, the Borrowing Base Certificate referred to in Section 4.01(1)(h)).

"**Designated Pari Hedge Agreement**" means each Designated Hedge Agreement in respect of which the notice delivered to the Administrative Agent by the Borrower and the applicable Lender Counterparty confirms that such Designated Hedge Agreement constitutes a "Designated Pari Hedge Agreement" for all purposes hereof so long as, on the date of such designation (or, in the event the Designated Pari Amount with respect thereto shall increase as contemplated by the definition of such term, on the date of effectiveness of such increase), the establishment of a Designated Pari Hedge Reserve in the amount of the Designated Pari Amount with respect thereto would not result in the Total Utilization of Revolving Commitments exceeding the Borrowing Base then in effect (but after giving pro forma effect to the establishment of such Designated Pari Hedge Reserve); provided that only Hedge Agreements related to commodity prices may constitute Designated Pari Hedge Agreements.

"**Designated Pari Hedge Obligations"** means all obligations of every nature of the Loan Parties under each Designated Pari Hedge Agreement (whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)), including obligations for interest (including interest that would continue to accrue pursuant to such Designated Pari Hedge Agreement on any such obligation after the commencement of any proceeding under the Debtor Relief Laws with respect to any Loan Party, whether or not such interest is allowed or allowable against such Loan Party in any such proceeding), payments for early termination of such Designated Pari Hedge Agreement, fees, expenses and indemnification.

"**Designated Pari Hedge Reserves**" means, with respect to any Designated Pari Hedge Agreement, the reserves that the Administrative Agent from time to time establishes in its Permitted Discretion as being reasonably appropriate to reflect the aggregate amount of Obligations in respect of such Designated Pari Hedge Agreement. Without limiting the Administrative Agent's Permitted Discretion, a Designated Pari Hedge Reserve at any time may be established by reference to the amount of such Obligations set forth in most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(6) (or, prior to the first such delivery, the Borrowing Base Certificate referred to in Section 4.01(1)(h)); provided that at any time the Designated Pari Hedge Reserves shall not be less than the aggregate of the Designated Pari Amounts then in effect.

"**Designated Preferred Stock**" means Preferred Stock of any Restricted Subsidiary of the Borrower or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of Section 7.05(a).

"**Designated Revolving Commitments**" means any commitments to make loans or extend credit on a revolving basis to the Borrower or any Restricted Subsidiary by any Person other than the Borrower or any Restricted Subsidiary that have been designated in an Officer's Certificate delivered to the Administrative Agent as "Designated Revolving Commitments" until such time as the Borrower subsequently delivers an Officer's Certificate to the Administrative Agent to the effect that such commitments will no longer constitute "Designated Revolving Commitments"; *provided* that, during such time, except for purposes of determining actual compliance with the Financial Covenant, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Fixed Charge Coverage Ratio, Senior Secured Net Leverage Ratio and the availability of any Baskets hereunder.

"**Development**" means the ownership, occupation, design, development, construction, system establishment, testing, start-up, commissioning, implementation, optimization, repair, operation, maintenance and use of the Phase II Project through final completion of the Phase II Project as determined by the Board of Directors.

"**Dilution Factors**" means, without duplication, with respect to any period, the aggregate amount of all deductions, credit memos, returns, adjustments, allowances, bad debt write-offs and other non-cash credits (including all volume discounts, trade discounts and rebates) that are recorded to reduce Accounts of the Borrower in a manner consistent with current and historical accounting practices of the Borrower.

"**Dilution Ratio**" means, at any time, the amount (expressed as a percentage) equal to (a) the aggregate amount of the applicable Dilution Factors in respect of the Accounts of the Borrower for the 12 most recently ended fiscal months divided by (b) total gross invoices of the Borrower for such 12 most recently ended fiscal months.

"**Dilution Reserve**" means, at any time, the product of (a) the excess of (i) the applicable Dilution Ratio at such time over (ii) 5%, multiplied by (b) the aggregate amount of Eligible Accounts at such time.

"**Discharge**" means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, in any such case in whole or in part.

"**disposition**" has the meaning set forth in the definition of "Asset Sale."

"**Disqualified Institution**" means (a) those particular banks, financial institutions and other institutional lenders identified in writing by the Borrower to the Arrangers on or prior to July 18, 2017 and (b) any competitor of the Borrower or its Subsidiaries and any Affiliate of such competitor, in each case under this clause (b), identified in writing by or on behalf of the Borrower to the Arrangers on or prior to July 31, 2017 or, solely with respect to competitors that are operating companies, identified in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Closing Dates or (ii) the Administrative Agent from time to time after the Closing Date; provided that any Person that is a Lender and subsequently becomes a Disqualified Institution (but was not a Disqualified Institution at the time it became a Lender) shall be deemed to not be a Disqualified Institution hereunder. The identity of Disqualified Institutions may be communicated by the Administrative Agent to a Lender upon request, but will not be otherwise posted or distributed to any Person.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the Maturity Date or the date the Loans are no longer outstanding; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability; provided further any Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries, any Parent Company, or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt or Consolidated Secured Debt, as applicable, will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Borrower.

"**Distressed Person**" shall have the meaning provided in the definition of the term Lender-Related Distress Event.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**Domestic Subsidiary**" means any direct or indirect Subsidiary of the Borrower that is organized or existing under the Laws of the United States, any state thereof or the District of Columbia.

"**Early Buyout Option Date**" means the first day on which the Borrower may exercise its option to terminate an Equipment Sub-sublease (and the associated Sublease (as defined in the Equipment Lease) as specified in and pursuant to Section 13 of such Equipment Sub-sublease).

"**Early Opt-in Election**" means the occurrence of:

(1) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Sections 3.03(b) through 3.03(e), are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Eurodollar Rate, and

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

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

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

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

"**Eligible Accounts**" means, at any time, the Accounts owned by the Borrower Parties at such time, other than any Account to which any of the exclusionary criteria set forth below applies. Eligible Accounts shall not include any Account of any Borrower Party:

(a) that (i) is not subject to a valid and perfected first priority Lien in favor of the Collateral Agent created under the Collateral Documents or (ii) is not owned by such Borrower Party free and clear of all Liens and of all rights of any other Person, except (A) Liens in favor of the Collateral Agent created under the Collateral Documents, and (B) Permitted Liens to the extent consisting of non-consensual statutory Liens or junior Liens subject to an intercreditor agreement on terms satisfactory to Administrative Agent (but without limiting the right of the Administrative Agent to establish any Reserves with respect to Permitted Liens);

(b) that does not arise from the sale of goods or the performance of services by such Borrower Party in the ordinary course of its business that have been accepted by the Account Debtor;

(c) that (i) is not evidenced by an invoice or other documentation reasonably satisfactory to the Administrative Agent (with the Administrative Agent agreeing that it will reasonably consider any form otherwise proposed by an Account Debtor) that has been sent to the Account Debtor or (ii) has been invoiced more than once (including where any Account that was partially paid and such Borrower Party created a new receivable for the unpaid portion of such Account);

(d) (i) 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 Borrower Party, (ii) upon which the Borrower Party's right to receive payment is contingent upon the fulfillment of any further obligation on the part of such Borrower Party or (iii) if such Account represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor**'**s obligation to pay that invoice is subject to such Borrower Party's completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer;

(e) that arises with respect to goods that are delivered on a bill-and-hold, sale on approval, sale-and-return, consignment or cash-on-delivery basis or placed on guaranteed sale or other terms by reason of which the payment by the Account Debtor is or may be conditional;

(f) that is payable in any currency other than (i) Dollars, (ii) Canadian Dollars or (iii) any other foreign currency approved by the Administrative Agent in its Permitted Discretion;

(g) as to which such Borrower Party is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial or administrative process;

(h) [reserved];

(i) that is the obligation of any Loan Party or any Affiliate of a Loan Party or any director, officer, other employee or equity holder of any Loan Party or any such Affiliate, or by any Person that has any common officer or director with any Loan Party (other than any Person that would not be an Affiliate but for a common officer or director);

(j) that is the obligation of an Account Debtor that is a Governmental Authority, unless, in the case of any Governmental Authority of the United States of America, any State thereof or the District of Columbia, the Administrative Agent, in its Permitted Discretion, has agreed to the contrary in writing and such Borrower Party, if necessary or desirable, has complied with respect to such obligation with the Federal Assignment of Claims Act of 1940, or any applicable State, county or municipal law restricting assignment thereof or perfection of Lien thereon;

(k) that is the obligation of an Account Debtor that (i) is organized under the laws of, or the chief executive officer of which is located in, any jurisdiction other than the United States of America, any State thereof or the District of Columbia or Canada or any Province thereof, or (ii) is governed by the laws of any jurisdiction other than the United States of America, any State thereof, or the District of Columbia or Canada or any Province thereof, unless in either case (A) payment of such Account is assured by a letter of credit assigned and delivered to, and drawable by, the Administrative Agent, satisfactory to the Administrative Agent in its Permitted Discretion as to form, amount and issuer, or (B) such Account is covered by credit insurance in form, substance and amount, and by an insurer, satisfactory to the Administrative Agent in its Permitted Discretion (with the extent of such coverage being determined giving effect to any foreign country limits, insured percentage amounts and credit limits under such credit insurance, it being also understood and agreed that any deductible thereunder shall reduce the amount of such Accounts that are otherwise eligible under this clause);

(l) that is the obligation of an Account Debtor that is a Sanctioned Person;

(m) to the extent that any defense, counterclaim, setoff or dispute has been asserted as to such Account (but any portion of such Account net of the amount of such defense, counterclaim, setoff or dispute shall not be excluded as an Eligible Account pursuant to this clause);

(n) to the extent that (i) such Borrower Party or any Affiliate thereof is liable for goods sold or services rendered by the Account Debtor or any Affiliate thereof to such Borrower Party or any Affiliate thereof or is otherwise indebted thereto, but only to the extent of the potential defense, counterclaim or setoff, or (ii) such Account is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of the Account Debtor, in each case, only to the extent thereof;

(o) to the extent such Account is evidenced by a judgment, or any promissory note, instrument or chattel paper;

(p) that is in default; provided, that, without limiting the generality of the foregoing, an Account shall be deemed in default upon the occurrence of any of the following:

(i) such Account is not paid within the earlier of 60 days following its due date or 90 days following its original invoice date;

(ii) any Account Debtor obligated on such Account suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due;

(iii) a petition is filed by or against any Account Debtor obligated on such Account under any Debtor Relief Law; or

(iv) any check or other instrument of payment with respect to such Account has been returned uncollected for any reason;

(q) that is the obligation of an Account Debtor if 50% or more of all Accounts owing by such Account Debtor and its Affiliates are ineligible pursuant to clause (p) above;

(r) to the extent that such Account, together with all other Accounts owing by such Account Debtor and its Affiliates, as of any date of determination exceed 25% of all Eligible Accounts (but in each case only to the extent of such excess);

(s) to the extent such Account exceeds any credit limit established by the Administrative Agent, in its Permitted Discretion, following such Borrower Party's receipt from the Administrative Agent of prior written notice (which such notice may be made by electronic transmission) of such limit; or

(t) as to which any of the representations or warranties in the Loan Documents with respect to such Account are untrue in any material respect.

Any Account acquired in an acquisition permitted under this Agreement that has not been subject to a field examination shall nevertheless constitute an Eligible Account for the period of 60 days following the consummation of such acquisition to the extent that such Account would otherwise qualify as an Eligible Account (all such Accounts, collectively, the "**Eligible Acquired Account**"); provided, however, that the aggregate value of the Eligible Acquired Accounts (taking into account, for purposes of valuation, the immediately following paragraph) shall not exceed 10% of the lesser of (x) the Borrowing Base and (y) the aggregate unused amount of the Revolving Commitments then in effect. To the extent field exams on such Eligible Acquired Accounts have not been completed within such 60 day period, they shall no longer constitute Eligible Accounts.

In determining the amount of an Eligible Account, the face amount of an Account may, in the Permitted Discretion of the Administrative Agent, be reduced by, without duplication (whether of the exclusionary criteria set forth in the definition of Eligible Accounts or of any Reserve, or otherwise), to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, warranty and other claims, returns, credits or credits pending, promotional program allowances, price adjustments, finance charges, service charges or other allowances (including any amount that such Borrower Party may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)), (ii) the amount of all sales Taxes and excise Taxes and (iii) the aggregate amount of all Cash and Cash Equivalents received in respect of such Account but not yet applied by such Borrower Party to reduce the amount of such Account.

"**Eligible Assignee**" means any Person other than a natural person (or a holding company, investment vehicle or trust fund, or owned and operated for the primary benefit of, a natural person) that is (a) a Lender, an affiliate of any Lender or an Approved Fund (any two or more Approved Funds being treated as a single Eligible Assignee for all purposes hereof), or (b) a commercial bank, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business; provided, (i) no Defaulting Lender, Loan Party or Affiliate of a Loan Party shall be an Eligible Assignee and (ii) no Disqualified Institutions may be an Eligible Assignee.

"**Eligible Inventory**" means, at any time, the Inventory owned by the Borrower Parties at such time, other than any Inventory to which any of the exclusionary criteria set forth below applies. Eligible Inventory shall not include any Inventory of any Borrower Party that:

(a) (i) is not subject to a valid and perfected first priority Lien in favor of the Collateral Agent created under the Collateral Documents or (ii) is not owned by such Borrower Party free and clear of all Liens and of all rights of any other Person (including the rights of a customer that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower Party's performance with respect to such Inventory), except (A) Liens in favor of the Collateral Agent created under the Collateral Documents, (B) Permitted Liens to the extent consisting of non-consensual statutory Liens or junior Liens subject to an intercreditor agreement on terms satisfactory to Administrative Agent (but without limiting the right of the Administrative Agent to establish any Reserves with respect to Permitted Liens), and (C) in the case of Inventory referred to in clause (d) or (f)(i) below, the Lien thereon of the landlord, third party warehouser or bailee, as the case may be, if a Rent Reserve or another Reserve has been established with respect to such Lien on such Inventory;

(b) is not located at one of the locations in the continental United States of America set forth on Schedule 6.19; provided that Inventory that is in transit from one location set forth on Schedule 6.19 to another location set forth on Schedule 6.19, in each case, for a period of not more than 10 days, shall not be excluded as Eligible Inventory under this clause;

(c) is in transit to or from a location of such Borrower Party (other than Inventory that is in transit from one location set forth on Schedule 6.19 to another location set forth on Schedule 6.19, in each case, for a period of not more than 10 days);

(d) is located on real property leased by such Borrower Party where the aggregate value of the Inventory exceeds $2,000,000, unless (i) the applicable landlord has executed and delivered to the Administrative Agent a Collateral Access Agreement with respect to such location or (ii) the Administrative Agent has established a Rent Reserve;

(e) is located on real property owned by such Borrower Party subject to a mortgage (or a similar Lien) in favor of a Person other than the Collateral Agent where the aggregate value of the Inventory exceeds $2,000,000, unless (i) a mortgagee waiver (or other intercreditor arrangement) has been delivered to the Administrative Agent in form and substance reasonably satisfactory to it or (ii) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion;

(f) is located in a third party warehouse or is in the possession of a consignee or bailee where the aggregate value of the Inventory exceeds $2,000,000, unless (i) such warehouse, consignee or bailee has executed and delivered to the Administrative Agent a Collateral Access Agreement with respect to such Inventory or (ii) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion;

(g) is covered by a negotiable bill of lading or other document of title, unless such bill of lading or other document of title has been delivered to Administrative Agent with all necessary endorsements, free and clear of all Liens except those permitted by clause (a) above;

(h) is not of a type held for sale in the ordinary course of business of such Borrower Party;

(i) is obsolete, discontinued, contaminated, defective, slow moving, unsaleable, damaged or unfit for sale;

(j) consists of supplies used or consumed in such Borrower Party's business or spare parts, maintenance parts, accessories, display items, prototypes, packaging or shipping materials, display items or sample inventory, customer supplied parts or replacement parts;

(k) consists of goods that have been returned or rejected by any customer unless such returned items are of good and merchantable quality and held for resale by such Borrower Party in the ordinary course of business;

(l) consists of (i) Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available to the Administrative Agent or (ii) goods that are restricted or controlled or are regulated items or do not conform in all material respects to all standards imposed by any applicable Governmental Authority;

(m) consists of goods that are bill and hold goods;

(n) contains or bears any intellectual property rights licensed to such Borrower Party unless the Administrative Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any Contractual Obligation with such licensor or (iii) incurring any obligation or liability with respect to payment of royalties;

(o) is not covered by casualty insurance as required by the provisions of this Agreement; or

(p) as to which any of the representations or warranties in the Loan Documents with respect to such Inventory are untrue in any material respect;.

Inventory acquired in an acquisition permitted under this Agreement that has not been subject to an appraisal or field examination shall nevertheless constitute Eligible Inventory for the period of 60 days following the consummation of such acquisition to the extent that such Inventory would otherwise qualify as Eligible Inventory (all such Inventory, collectively, the "**Eligible Acquired Inventory**"); provided, however, that the aggregate value of the Eligible Acquired Inventory (valued at cost (determined on a first-in first-out basis) (net of Reserves with respect to Inventory)) shall not exceed (1) 10% of the lesser of (x) the Borrowing Base and (y) the aggregate unused amount of Revolving Commitments then in effect minus (2) the aggregate value of the Eligible Acquired Accounts included in the Borrowing Base as calculated in accordance with the proviso to the second to last paragraph of the definition of "Eligible Accounts." To the extent field exams on such Eligible Acquired Inventory have not been completed within such 60 day period, they shall no longer constitute Eligible Inventory.

Notwithstanding the foregoing, the amount of Inventory shall be adjusted to reflect general ledger adjustments that have the effect of reducing Inventory Value to its appropriate GAAP value. In the event that Inventory which was previously Eligible Inventory ceases to be Eligible Inventory hereunder, the applicable Borrower Party shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate.

"**Employee Benefit Plan**" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code, or (c) any Person whose assets include (for purposes of the Plan Asset Regulations) the assets of any such "employee benefit plan" or "plan".

"**EMU**" means the economic and monetary union as contemplated in the Treaty on European Union.

"**Engagement Letter**" means that certain Engagement Letter, dated July 31, 2017, by and among Goldman Sachs Bank USA, the Borrower, TPG Capital BD, LLC and for purposes of Sections 6 and 7 thereof, Top Parent.

"**Environment**" means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and sub-surface strata, and natural resources such as wetlands, flora and fauna.

"**Environmental Claim**" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries or reports prepared in connection with potential acquisitions or financings) or proceedings with respect to any Environmental Liability or Environmental Law (hereinafter "**Claims**"), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

"**Environmental Laws**" means any and all Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, human health.

"**Environmental Liability**" means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of its Subsidiaries directly or indirectly 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 or (e) any contract or other written agreement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Environmental Permit**" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"**Equipment Lease**" has the meaning specified in the Collateral Trust Agreement.

"**Equipment Lease Advance**" has the meaning specified in the Collateral Trust Agreement.

"**Equipment Lessor**" means Stonebriar Commercial Finance LLC, a Delaware limited liability company, as sub-sublessor under the Equipment Lease, together with its permitted successors and assigns in such capacity.

"**Equipment Sub-sublease**" means each "Sub-sublease" as defined in the Equipment Lease, as set forth on Equipment Schedule No. 1 and Equipment Schedule 2 to the Equipment Lease.

"**Equipment Term Expiration Date**" means each "Term Expiration Date" as defined in the Equipment Lease.

"**Equity Interests**" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"**Equity Offering**" means any public or private sale of common equity or Preferred Stock of the Borrower or any Parent Company (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Borrower's or any Parent Company's common equity registered on Form S-4 or Form S-8;

(2) issuances to any Restricted Subsidiary of the Borrower; and

(3) any such public or private sale that constitutes an Excluded Contribution or CapEx Equity.

"**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 any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"**ERISA Event**" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates 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; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of withdrawal liability or written notification that a Multiemployer Plan is "insolvent" (within the meaning of Section 4245 of ERISA) or has been determined to be in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 430(k) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

"**Escrowed Proceeds**" means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "Escrowed Proceeds" shall include any interest earned on the amounts held in escrow.

"**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 "**euro**" means the single currency of participating member states of the EMU.

"**Eurodollar Rate**" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate ("**LIBOR**"), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations as may be designated by the Administrative Agent from time to time) (in such case, the "**LIBOR Rate**") at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m., London time, two (2) Business Days prior to such date for Dollar deposits with a term of one (1) month commencing that day;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; *provided, further*, that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent in consultation with the Borrower; *provided, further*, that in no event shall the Eurodollar Rate be less than 0.0%.

"**Eurodollar Rate Loan**" means a Loan that bears interest at a rate based on clause (a) of the definition of "Eurodollar Rate."

"**Event of Default**" has the meaning specified in Section 8.01.

"**Excess Availability**" means, at any time, an amount equal to (a) the lesser of (i) the Maximum Credit and (ii) the Borrowing Base then in effect minus (b) the Total Utilization of Revolving Commitments.

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

"**Excluded Account**" means any deposit or securities account now or hereafter owned by any Loan Party that is used solely by such Loan Party (a) as a payroll account so long as such payroll account is a zero balance account, (b) as a petty cash account so long as the aggregate amount on deposit in all petty cash accounts of all Loan Parties does not exceed $50,000 at any one time for all such deposit accounts combined, (c) to hold amounts required to be paid in connection with workers compensation claims, unemployment insurance, social security benefits and other similar forms of governmental insurance benefits, (d) to hold amounts which are required to be pledged or otherwise provided as security as required by law or pension requirement, (e) to hold cash and cash equivalents pledged to the Equipment Lessor to secure the Equipment Lease Obligations (as defined in the Collateral Trust Agreement) so long as the aggregate amount of cash and cash equivalents so pledged and on deposit in or credited to all such accounts does not exceed $6,672,335 at any one time or (f) as a withholding tax or fiduciary account.

"**Excluded Assets**" means the collective reference to:

(1) any lease, license, contract or agreement to which any Loan Party is a party, and any of its rights or interest thereunder, if and to the extent that a security interest is prohibited by or in violation of (i) any law, rule or regulation applicable to such Loan Party, or (ii) a term, provision or condition of any such lease, license, contract or agreement (unless such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); *provided however* that the Excluded Assets shall not include (and security interest under the Collateral Documents shall attach) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in subclauses (i) or (ii) above; provided further that the exclusions referred to in this clause (1) of this definition shall not include any Proceeds (as defined in the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction) of any such lease, license, contract or agreement;

(2) any portion of Capital Stock that is voting Capital Stock of any Foreign Subsidiary or CFC Holdco to the extent such portion of Capital Stock represents voting power in excess of 65% of the total combined voting power of all classes of voting stock (within the meaning of Treasury Regulations section 1.956-2(c)(2)) of such Foreign Subsidiary or CFC Holdco;

(3) any "intent-to-use" application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(4) any equity interests in, and the assets and properties of, an Excluded Subsidiary;

(5) Excluded Accounts; and

(6) any interest (fee, leasehold or otherwise) of any Loan Party in any real property.

"**Excluded Capital Expenditures**" means any Capital Expenditure (whether or not required) made solely for maintenance, replacement or environmental, human health or safety or other regulatory purposes and not in connection with the incurrence of Expansion Capital Expenditures.

"**Excluded Contribution**" means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

(1) contributions to its common equity capital;

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

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

in each case, designated as Excluded Contributions pursuant to an Officer's Certificate and that are excluded from the calculation set forth in clause (3) of Section 7.05(a); *provided* that Excluded Contributions shall not include Cure Amounts.

"**Excluded Subsidiaries**" means all of the following and "**Excluded Subsidiary**" means any of them:

(1) any Subsidiary that is not a wholly-owned Subsidiary of the Borrower or a Subsidiary Guarantor,

(2) any Foreign Subsidiary,

(3) any CFC Holdco,

(4) any Domestic Subsidiary that is a direct or indirect Subsidiary of any CFC,

(5) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law or by Contractual Obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Closing Date (or, with respect to any Subsidiary acquired by the Borrower or a Restricted Subsidiary after the Closing Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty (including any Broker-Dealer Regulated Subsidiary) or if such Guaranty would require governmental (including regulatory) or third party (other than any Loan Party or their respective Subsidiaries) consent, approval, license or authorization,

(6) any special purpose vehicle (or similar entity),

(7) any Captive Insurance Subsidiary or not-for-profit Subsidiary,

(8) any Subsidiary that is not a Material Subsidiary,

(9) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost (including any material adverse tax consequences) of providing the Guaranty will outweigh the benefits to be obtained by the Lenders therefrom, and

(10) any Unrestricted Subsidiary;

provided that any such Subsidiary that is an Excluded Subsidiary pursuant to any clause above will cease to be an Excluded Subsidiary at any time such Subsidiary guarantees Indebtedness under the Term Facility or the Senior Secured Notes.

"**Excluded Swap Obligation**" means, with respect to any Loan Party, (a) 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 (each such obligation, a "**Swap Obligation**"), if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.02 of the Guaranty and any other "keepwell, support or other agreement" for the benefit of such Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act) at the time the guarantee of such Loan Party, or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation, or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Party is a "financial entity," as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Loan Party becomes or would become effective with respect to such Swap Obligation, or (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Loan Party as specified in any agreement between the relevant Loan Parties and hedge counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest becomes excluded in accordance with the first sentence of this definition.

"**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:

(1) any tax imposed on (or measured by) such recipient's net income or profits (or franchise or net worth tax in lieu of such tax on net income or profits) imposed by a jurisdiction (or any political subdivision thereof) as a result of such recipient being organized under the laws of or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such recipient and the jurisdiction (including as a result of such recipient carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction), other than a connection arising solely from such recipient having executed, delivered, enforced, 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 sold or assigned an interest in, any Loan or Loan Document,

(2) any branch profits tax under Section 884(a) of the Code, or any similar tax, imposed by any jurisdiction described in clause (1),

(3) other than with respect to and to the extent that any Lender becomes a party hereto pursuant to the Borrower's request under Section 3.07, any U.S. federal tax that is withheld or required to be withheld on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires the applicable interest in such Loan, or (ii) designates a new Lending Office except, in the case of a Lender that designates a new Lending Office or is an assignee, to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such U.S. federal tax pursuant to Section 3.01,

(4) any withholding tax attributable to such Lender's failure to comply with Section 3.01(3),

(5) any withholding tax imposed under FATCA,

(6) any U.S. federal backup withholding under Section 3406 of the Code, and

(7) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (6) of this definition.

"**Expansion Capital Expenditures**" means (i) any Capital Expenditures carried out for the purpose of increasing the earnings capacity of the Borrower or a Subsidiary Guarantor or (ii) any Investment in a Restricted Subsidiary made pursuant to clause (26) of the definition of "Permitted Investments"; *provided* that Expansion Capital Expenditures shall include any Phase II Project Costs whether or not such Phase II Project Costs are considered capital expenditures in accordance with GAAP. Excluded Capital Expenditures shall be deemed not to be Expansion Capital Expenditures.

"**Facility**" means the Commitments and Loans evidenced by this Agreement.

"**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 in effect on the Closing Date or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any current or future regulations promulgated thereunder or official interpretations thereof), any applicable intergovernmental agreement, treaty or convention among Governmental Authorities entered into in respect thereof, and any provision of law or administrative guidance implementing or interpreting such provisions, including any agreements entered into pursuant to any such intergovernmental agreement or Section 1471(b)(1) of the Code as of the Closing Date (or any amended or successor version described above).

"**FCPA**" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"**Federal Funds Rate**" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided* that (a) 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 (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three depository institutions of recognized standing selected by it; *provided*, *further*, that in no event shall the Federal Funds Rate be less than 0.0%.

"**Federal Reserve Bank of New York's Website**" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"**Fee Letter**" means that certain Fee Letter, dated as of the Closing Date, by and among the Borrower and the Arrangers as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Financial Covenant**" means the covenant specified in Section 7.12.

"**Financial Officer**" means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

"**First Amendment Effective Date**" means September 10, 2020.

"**Fixed Charge Coverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA of the Borrower for such Test Period to (b) Fixed Charges of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

Notwithstanding the foregoing, for purposes of calculating the Fixed Charge Coverage Ratio under Section 7.12 and the definitions of "Specified Investment Payment Conditions" and "Specified Restricted Payment Conditions", the "Fixed Charge Coverage Ratio" shall be defined as follows:

"Fixed Charge Coverage Ratio" means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA of the Borrower for such Test Period less Capital Expenditures paid in cash by the Borrower and the Restricted Subsidiaries for such Test Period (except to the extent financed with long term Indebtedness or equity, excluding Capital Expenditures financed with Revolving Loans) to (b) the sum of (i) Fixed Charges of the Borrower and the Restricted Subsidiaries for such Test Period, (ii) income Taxes payable by the Borrower and the Restricted Subsidiaries for such Test Period, (iii) scheduled principal payments on Indebtedness (including under Capitalized Lease Obligations) payable by the Borrower and the Restricted Subsidiaries for such Test Period and (iv) all cash dividends and other cash distributions (including repurchases) paid or to be paid to the extent utilizing the Specified Restricted Payment Conditions, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

"**Fixed Charges**" means, with respect to any Person for any period, the sum of, without duplication:

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and

(3) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

"**floor**" means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.

"**Foreign Lender**" means a 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 or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

"**Foreign Subsidiary**" means any direct or indirect Restricted Subsidiary of the Borrower that is not a Domestic Subsidiary.

"**Fronting Exposure**" means, at any time there is a Defaulting Lender, (a) with respect to Issuing Bank, such Defaulting Lender's Pro Rata Share of the outstanding Obligations with respect to Letters of Credit issued by Issuing Bank other than such Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, (b) with respect to the Swing Line Lender, such Defaulting Lender's Pro Rata Share of the aggregate principal amount of the Swing Line Loans outstanding at such time, other than any portion of such Pro Rata Share that has been reallocated to other Lenders in accordance with the terms hereof, and (c) with respect to the Administrative Agent, such Defaulting Lender's Pro Rata Share of the aggregate principal amount of the Protective Advances outstanding at such time, other than any portion of such Pro Rata Share that has been reallocated to other Lenders in accordance with the terms hereof.

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

"**Funded Debt**" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(1) in respect of borrowed money or advances; or

(2) evidenced by indentures, bonds, notes, debentures, loan agreements or similar instruments.

For the avoidance of doubt, "Funded Debt" shall not include Hedging Obligations.

"**Funding Notice**" means a notice substantially in the form of Exhibit A-1.

"**GAAP**" means generally accepted accounting principles in the United States of America 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 have been approved by a significant segment of the accounting profession, as in effect from time to time. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower, the Co-Issuer or any of the Borrower's Subsidiaries at "fair value," as defined therein.

Notwithstanding the foregoing, if at any time any change occurs after the Closing Date in GAAP (or IFRS) or in the application thereof on the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document, and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (or IFRS); *provided further* that until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) prior to such change therein and (b) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP (or IFRS).

"**Goods**" as defined in Article 9 of the UCC as in effect from time to time in the State of New York.

"**Governmental Acts**" means any act or omission, whether rightful or wrongful, of any present or future Governmental Authority.

"**Governmental Authority**" means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, or otherwise, 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).

"**Governmental Authorizations**" means all permits, Licenses, authorizations, certificates, waivers, concessions, exemptions, orders and other and approvals issued by or obtained from a Governmental Authority by Holdings, the Borrower or any of the Restricted Subsidiaries, and in effect as of the Closing Date.

"**Grant Clawback Agreement**" means that certain letter agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent and Collateral Agent, the Pari Collateral Agent, Arkansas Economic Development Commission, Mississippi County, Arkansas, Osceola and the Arkansas Development Finance Authority, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantee**" means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term "Guarantee" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with the Transaction or any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guarantor**" has the meaning specified in clause (2) of the definition of "Collateral and Guarantee Requirement." For avoidance of doubt, the Borrower may, in its sole discretion, cause any Parent Company or Restricted Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Parent Company or Restricted Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Parent Company or Restricted Subsidiary shall be a Guarantor hereunder for all purposes; *provided* that (i) in the case of any Parent Company or Restricted Subsidiary organized in a foreign jurisdiction, the Administrative Agent shall be reasonably satisfied with the jurisdiction of organization of such Parent Company or Restricted Subsidiary and (ii) the Administrative Agent shall have received at least two (2) Business Days prior to the effectiveness of such joinder all documentation and other information in respect of such Guarantor required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

"**Guaranty**" means (a) the Guaranty substantially in the form of Exhibit E made by Holdings and each Subsidiary Guarantor, (b) each other guaranty and guaranty supplement delivered pursuant to Section 6.11 and (c) each other guaranty and guaranty supplement delivered by any Parent Company or Restricted Subsidiary pursuant to the second sentence of the definition of "Guarantor."

"**Hazardous Materials**" means all explosive or radioactive substances or wastes, and all other substances, wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

"**Hedge Agreement**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under any Hedge Agreement. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

"**Holdings**" means BRS Intermediate Holdings LLC, a Delaware limited liability company. "Holdings" shall also include any "Successor Holdings."

"**IFRS**" means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

"**Immediate Family Members**" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"**Increased Amount Date**" as defined in Section 2.15.

"**Incremental Amounts**" has the meaning specified in clause (1) of the definition of Refinancing Indebtedness.

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

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

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

(c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations and Sale-Leaseback Transactions, other than Specified Sale-Leaseback Transactions) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice and (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable;

(d) representing the net obligations under any Hedging Obligations; or

(e) Attributable Indebtedness;

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

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person; *provided* that notwithstanding the foregoing, Indebtedness will be deemed not to include:

(i) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice (including any Contingent Obligations issued in connection with operating licenses and permits),

(ii) reimbursement obligations under commercial letters of credit (*provided* that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),

(iii) [reserved],

(iv) accruals for payroll and other liabilities accrued in the ordinary course of business and those accrued in connection with the Management Services Agreements,

(v) deferred or prepaid revenues,

(vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care), and

(vii) obligations in connection with a Specified Sale-Leaseback Transaction;

provided, further, that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"**Indemnified Liabilities**" has the meaning specified in Section 10.05.

"**Indemnified Taxes**" has the meaning specified in Section 3.01(6).

"**Indemnitees**" has the meaning specified in Section 10.05.

"**Independent Assets or Operations**" means, with respect to any Parent Company, that Parent Company's total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Borrower and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.0% of such Parent Company's corresponding consolidated amount.

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

"**Information**" has the meaning specified in Section 10.09.

"**Intellectual Property Security Agreements**" has the meaning specified in the Security Agreement.

"**Intercompany Note**" means the Intercompany Note, dated as of the Closing Date, substantially in the form of Exhibit K executed by the Borrower and each Restricted Subsidiary of the Borrower party thereto.

"**Intercreditor Agreement**" means each of the Collateral Trust Agreement, the ABL Intercreditor Agreement and the Grant Clawback Agreement.

"**Interest Payment Date**" means (a) with respect to (i) any Loan that is a Base Rate Loan (other than a Swing Line Loan or Protective Advance), the last Business Day of each March, June, September and December of each year, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan, and (ii) any Loan that is a Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; provided, in the case of each Interest Period of longer than three months "Interest Payment Date" shall also include each date that is three months, or an integral multiple thereof, after the commencement of such Interest Period; (b) with respect to any Swing Line Loan, the date that such Loan is required to be repaid; and (c) with respect to any Protective Advance, the date that such Protective Advance is required to be repaid.

"**Interest Period**" means, in connection with a Eurodollar Rate Loan, an interest period of one, two, three or six months or, subject to the consent of all applicable Lenders, such other period that is 12 months or less, as selected by Borrower in the applicable Funding Notice or Conversion/Continuation Notice, (a) initially, commencing on the Credit Date or Conversion/Continuation Date thereof, as the case may be; and (b) thereafter, commencing on the day on which the immediately preceding Interest Period expires; provided, (i) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately 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, subject to clause (iii) of this definition, end on the last Business Day of a calendar month; and (iii) no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Commitment Termination Date.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

"**Inventory**" as defined in Article 9 of the UCC as in effect from time to time in the State of New York.

"**Inventory Value**" means, with respect to any Eligible Inventory, the lower of (a) cost on a first-in-first-out basis, with cost determined in conformity with GAAP (but without regard to intercompany profit and increases for currency exchange rates) and computed in good faith in the manner consistent with the most recent Inventory appraisal received by the Administrative Agent in accordance with this Agreement, or (b) market value.

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

"**Investment Grade Securities**" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice), purchases or sales or other dispositions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definitions of "Permitted Investments" and "Unrestricted Subsidiary" and Section 7.05,

(1) "Investments" will include the portion (proportionate to the Borrower's Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided* that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to:

(a) the Borrower's "Investment" in such Subsidiary at the time of such redesignation; *minus*

(b) the portion (proportionate to the Borrower's Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

"**Investor**" means any of Koch Industries, Inc., TPG Capital, L.P., Arkansas Teacher Retirement System, Global Principal Partners LLC, United States Steel Corporation, directly or indirectly through its Subsidiaries, and any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"**IP Rights**" has the meaning specified in Section 5.15.

"**IRS**" means Internal Revenue Service of the United States, or any successor federal agency.

"**ISP**" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

"**Issuance Notice**" means an Issuance Notice substantially in the form of Exhibit A-3.

"**Issuing Bank**" means each Lender that shall have become an Issuing Bank as provided herein, other than any such Person that shall have ceased to be an Issuing Bank as provided herein, each in its capacity as an issuer of Letters of Credit hereunder. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank other than Disqualified Institutions, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.03 with respect to such Letters of Credit). As of the Closing Date, each Lender shall be an Issuing Bank with respect to its Issuing Bank Sublimit. With respect to any Letter of Credit issued or requested to be issued, references to Issuing Bank shall mean the applicable Issuing Bank that issued or has been requested by Borrower to issue such Letter of Credit.

"**Issuing Bank Sublimit**" means, as to each Issuing Bank on the Closing Date, an amount equal to its Pro Rata Share (as in effect on the Closing Date) of the Letter of Credit Sublimit, as such amounts may be reallocated subject to the consent of the affected Issuing Bank and the Administrative Agent.

"**Joinder Agreement**" means an agreement substantially in the form of Exhibit J.

"**Laws**" means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"**Legal Holiday**" means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

"**Lender**" means each financial listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment and Assumption or a Joinder Agreement. Unless the context otherwise requires, the term "Lender" includes the Swing Line Lender and, with respect to the Protective Advances, the Administrative Agent.

"**Lender Counterparty**" means each Lender, each Agent and each of their respective Affiliates counterparty to a Hedge Agreement or an agreement in respect of Cash Management Services (including any Person who is an Agent or a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Hedge Agreement, ceases to be an Agent or a Lender, as the case may be); provided, at the time of entering into a Hedge Agreement or an agreement in respect of Cash Management Services, no Lender Counterparty shall be a Defaulting Lender. A Lender Counterparty may include any other counterparty to a Designated Hedge Agreement that is reasonably acceptable to the Administrative Agent.

"**Lender-Related Distress Event**" means, with respect to any Lender or any direct or indirect parent company of such Lender (each, a "**Distressed Person**"), (a) that such Distressed Person is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person's assets, (c) such Distressed Person is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or (d) that such Distressed Person becomes the subject of a Bail-in Action; *provided* that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any direct or indirect parent company of a Lender by a Governmental Authority or an instrumentality thereof 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

"**Lending Office**" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"**Letter of Credit**" means a commercial or standby letter of credit issued or to be issued by Issuing Bank pursuant to this Agreement.

"**Letter of Credit Sublimit**" means the lesser of (a) $ 25.0 million and (b) the aggregate unused amount of the Revolving Commitments then in effect.

"**Letter of Credit Usage**" means, as at any date of determination, the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding, and (b) the aggregate amount of all drawings under Letters of Credit honored by Issuing Bank and not theretofore reimbursed by or on behalf of the Borrower. For purposes of this definition, if any drawing has been made under a Letter of Credit and such drawing has not been honored or refused by the applicable Issuing Bank, such Letter of Credit shall be deemed to be "outstanding" in the amount equal to the sum (without duplication) of any such pending drawing plus any undrawn amount of such Letter of Credit. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.13 or 3.14 of the ISP or Article 26 of the UCP or the express terms of the Letter of Credit, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the available amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum available amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum available amount is in effect at such time.

"**License**" means any license, authorization, registration, accreditation, approval, qualification, provider number, right, privilege, consent or other permit issued by any Governmental Authority, together with any amendments, supplements and other modifications thereto.

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

"**Limited Condition Transactions**" means any (1) Permitted Acquisition or other investment permitted hereunder by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third-party financing and (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

"**Line Cap**" means, at any given time, the lesser of the Maximum Credit and the Borrowing Base then in effect.

"**Loan**" means a Revolving Loan (including any Overadvances), a Swing Line Loan or a Protective Advance.

"**Loan Documents**" means collectively, any of this Agreement, the Notes, if any, the Engagement Letter, the Collateral Documents, the Guaranty, the Intercreditor Agreements, the Deposit Agreement, any documents or certificates executed by Borrower in favor of Issuing Bank relating to Letters of Credit.

"**Loan Parties**" means, collectively, (a) Holdings, (b) the Borrower and (c) each Subsidiary Guarantor.

"**Management Services Agreement**" means any management services agreement, bonus agreement or similar agreements among one or more of the Investors or Management Stockholders or certain of their respective management companies or Affiliates thereof associated with it or their advisors, if applicable, and the Borrower (or any Parent Company) or any amendment thereto or renewal or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders when taken as a whole, as compared to the Management Services Agreements as in effect on the Closing Date or as described in the confidential information memorandum with respect to the Closing Date Term Loans.

"**Management Stockholders**" means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Borrower (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date.

"**Margin Stock**" has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Market Capitalization**" means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Borrower or the applicable Parent Company, as applicable, on the date of the declaration of a Restricted Payment permitted pursuant to Section 7.05(b)(8) *multiplied by* (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"**Material Adverse Effect**" means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent under the Loan Documents.

"**Material Subsidiary**" means, as of the Closing Date and thereafter at any date of determination, each Restricted Subsidiary of the Borrower (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and the Restricted Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) when combined with Foreign Subsidiaries and CFC Holdcos the equity interests of which are Excluded Assets solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of the Borrower and the Restricted Subsidiaries as of the last day of the most recent Test Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiaries for such Test Period) 7.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than sixty (60) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more Restricted Subsidiaries as "Material Subsidiaries" to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries (to the extent applicable).

"**Maturity Date**" means the fifth anniversary of the Closing Date.

"**Maximum Credit**" means, at any time, the sum of the Revolving Commitments of all the Lenders in effect at such time. The Maximum Credit as of the First Amendment Effective Date is $350,000,000.

"**Minimum Collateral Amount**" means, at any time, (a) with respect to Cash Collateral consisting of Cash or Deposit Account balances, an amount equal to 105% of the amount of the Obligation with respect to which such Cash Collateral will be or has been provided and pledged and (b) otherwise, an amount determined by Administrative Agent and Issuing Bank in their sole discretion.

"**Maximum Rate**" has the meaning specified in Section 10.11.

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

"**Multiemployer Plan**" means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

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

"**Net Proceeds**" means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate cash and Cash Equivalents received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable Law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale or Casualty Event by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, stipulated loss value, premium, if any, and interest on Indebtedness (other than the Obligations and Indebtedness secured by Liens that are expressly subordinated to the Liens securing the Obligations, but in any event including the Equipment Lease Obligations (as defined in the Collateral Trust Agreement)) secured by a Lien on such assets and required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed the greater of $15.0 million and 10.0% of Consolidated EBITDA; and

(2) (a) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, any Permitted Equity Issuance by the Borrower or any Parent Company or any contribution to the common equity capital of the Borrower, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys' fees, accountants' fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance and (b) with respect to any Permitted Equity Issuance by any Parent Company, the amount of cash from such Permitted Equity Issuance contributed to the capital of the Borrower.

"**Net Recovery Percentage**" means, with respect to any category of Eligible Inventory, the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the expected recovery on the aggregate amount of the applicable category of Eligible Inventory at such time on a "going out of business" basis, net of operating expenses, liquidation expenses and commissions reasonably anticipated in the disposition of such assets, all as set forth in the most recent Inventory appraisal received by the Administrative Agent in accordance with this Agreement, and (b) the denominator of which is the original cost of the aggregate amount of the applicable category of Eligible Inventory subject to such appraisal (it being understood that different categories of Eligible Inventory may have different Net Recovery Percentages). The Net Recovery Percentage with respect to any category of Eligible Inventory shall be the percentage calculated using the expected recovery identified with respect to such category of Eligible Inventory in the most recent Inventory appraisal report received by the Administrative Agent in accordance with this Agreement.

"**New Revolving Loan Commitments**" as defined in Section 2.15.

"**New Revolving Loan Lender**" as defined in Section 2.15

"**New Revolving Loans**" as defined in Section 2.15.

"**Non-Consenting Lender**" has the meaning specified in Section 3.07.

"**Non-Defaulting Lender**" means, at any time, a Lender that is not a Defaulting Lender.

"**Non-Excluded Taxes**" means all 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.

"**Non-Recourse Indebtedness**" means Indebtedness that is non-recourse to the Borrower and the Restricted Subsidiaries.

"**Note**" means a Revolving Loan Note or a Swing Line Note.

"**Notice**" means a Funding Notice, an Issuance Notice, or a Conversion/ Continuation Notice. Any Notice shall be executed by an Responsible Officer of Borrower in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing;

provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the close of business on the date that the telephonic notice is given. In the event of a discrepancy between the telephone notice and the written Notice, the written Notice shall govern. In the case of any Notice that is irrevocable once given, if Borrower provides telephonic notice in lieu thereof, such telephone notice shall also be irrevocable once given. Neither Administrative Agent nor any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly Responsible Officer or other person authorized on behalf of the Borrower or for otherwise acting in good faith.

"**Notice of Intent to Cure**" has the meaning specified in Section 8.04.

"**Obligations**" means all obligations of every nature of each Loan Party arising under any Loan Document or otherwise with respect to the Facility, including obligations from time to time owed to Agents (including former Agents), Issuing Bank, Swing Line Lender, Lenders or any of them and Lender Counterparties, under any Loan Document, whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under Letters of Credit, all Designated Hedge Obligations, all Designated Cash Management Services Obligations, fees, expenses, indemnification or otherwise, excluding, with respect to any Guarantor, Excluded Swap Obligations with respect to such Guarantor.

Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document. For the avoidance of doubt, with respect to the Intercreditor Agreements, the Obligations shall not include obligations owing to the Term Agent, the Specified Pari Passu Lien Debt Representative, the Trustee (as defined in the Collateral Trust Agreement in effect on the Closing Date) or any Debt Representative in respect of Additional Pari Passu Lien Debt (as defined in the Collateral Trust Agreement in effect on the Closing Date).

Notwithstanding the foregoing, (a) unless otherwise agreed to by the Borrower and any applicable Lender Counterparty (and subject to the Termination Conditions, if applicable), the obligations of Holdings, the Borrower or any Subsidiary under any Designated Hedge Agreement or Designated Cash Management Services Agreement shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and any other Loan Document shall not require the consent of the holders of Designated Hedge Obligations or Designated Cash Management Services Obligations.

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Treasury Department.

"**Officer**" means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Borrower or any other Person, as the case may be.

"**Officer's Certificate**" means a certificate signed on behalf of a Person by an Officer of such Person.

"**OID**" means original issue discount.

"**Opinion of Counsel**" means a written opinion reasonably acceptable to the Administrative Agent from legal counsel. Counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

"**ordinary course of business**" means activity conducted in the ordinary course of business of the Borrower and any Restricted Subsidiary.

"**Organizational Documents**" means

(1) 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);

(2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(3) 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.

"**Osceola**" means the City of Osceola, Arkansas.

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes described in paragraph (1) of the definition of "Excluded Taxes" that are imposed with respect to an assignment (other than an assignment made pursuant to Section 10.07).

"**Outstanding Amount**" means the outstanding principal amount of Loans after giving effect to any borrowings or repayments of Loans occurring on such date.

"**Overadvances**" has the meaning specified in Section 2.10.

"**Overnight Rate**" means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"**Parent Company**" means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of Holdings and/or the Borrower (for the avoidance of doubt (x) in the case of the Borrower, including Holdings and (y) in the case of Holdings, including Top Parent), as applicable.

"Pari Collateral Agent" means U.S. Bank National Association, in its capacity as "Collateral Agent" under the Collateral Trust Agreement, together with its permitted successors and assigns in such capacity.

"Pari Passu Lien Obligations" has the meaning assigned to "Fixed Asset Pari Passu Lien Obligations" in the ABL Intercreditor Agreement.

"**Pari Passu Secured Debt Cap**" means, as of any date of determination, an amount equal to (a) $400.0 million, *plus* (b) the product of (i) the CapEx Equity proceeds received since the Closing Date through and including such date of determination multiplied by (ii) two.

"**Participant Register**" has the meaning specified in Section 10.07(7).

"**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 and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates 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 preceding five plan years.

"**Perfection Certificate**" has the meaning specified in the Security Agreement.

"**Permitted Acquisition**" has the meaning specified in clause (3) of the definition of "Permitted Investments."

"**Permitted Asset Swap**" means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets (in each case excluding assets included in the Borrowing Base) and cash or Cash Equivalents between the Borrower or any Restricted Subsidiary and another Person; *provided* that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with the Term Credit Agreement or ABL Intercreditor Agreement, as applicable.

"**Permitted Bond Hedge Transaction**" means any call or capped call option (or substantially equivalent derivative transaction) on the Borrower's common equity purchased by the Borrower in connection with the issuance of any Convertible Indebtedness; *provided* that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

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

"**Permitted Discretion**" means a determination made by the Administrative Agent in the exercise of its reasonable credit judgment (from the perspective of a secured asset-based lender) and in accordance with customary business practices for comparable secured asset-based lending transactions.

"**Permitted Equity Issuance**" means any sale or issuance of any Qualified Equity Interests of the Borrower or any Parent Company.

"**Permitted Holder**" means (1) any of the Investors and Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of any such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Borrower and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Borrower or any Parent Company.

" **Permitted Indebtedness**" means Indebtedness permitted to be incurred in accordance with Section 7.02.

"**Permitted Investments**" means:

(1) any Investment in any Loan Party (including guarantees of obligations of the Guarantors);

(2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) (a) any Investment by the Borrower or any Restricted Subsidiary in any Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business, or in a business unit, line of business or division of such Person, if as a result of such Investment (i) such Person becomes a Restricted Subsidiary (and in the event such Investment was made by a Loan Party, becomes a Loan Party) or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting such business unit, line of business or division in which such Investment was made, as applicable, to, or is liquidated into, the Borrower or a Restricted Subsidiary (and in the event such Investment was made by a Loan Party, such amalgamation, merger,consolidation, transfer or conveyance is made to a Guarantor) (a "**Permitted Acquisition")**; *provided* that immediately after giving *pro forma* effect to any such Investment, (x) no Event of Default will have occurred and be continuing and (y) the Specified Investment Payment Conditions shall be satisfied with respect thereto; and

(b) any Investment held by such Person described in the preceding clause (a); *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date, in each of the foregoing cases with respect to any such Investment or binding commitment in effect on the Closing Date in excess of $5.0 million, as set forth on Schedule 7.05, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Closing Date; *provided* that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted hereunder;

(6) any Investment by the Borrower or any Restricted Subsidiary:

(a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);

(b) in satisfaction of judgments against other Persons;

(c) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or

(d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 7.02(b)(11);

(8) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding not to exceed (as of the date such Investment is made) the greater of (a) $40.0 million and (b) 25% of Consolidated EBITDA of the Borrower determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis) so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;

(9) Investments the payment for which consists of, or are funded by the sale of, Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company or are funded from cash equity contributions to the capital of the Borrower; *provided* that such Equity Interests, the proceeds from the sale of any such Equity Interests and such contributions to the capital of the Borrower will not increase the amount available for Restricted Payments under clause (3) of Section 7.05(a);

(10) (a) guarantees of Indebtedness permitted under Section 7.02, performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.07(b) (except transactions described in clauses (2), (6), (10), (16) or (23) of such Section);

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

(13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (i) $40.0 million and (ii) 25.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis) so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;

(14) [reserved];

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, independent contractors and members of management not in excess of $2.0 million outstanding at any one time, in the aggregate, so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, including pursuant to Management Services Agreements, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Borrower or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Restricted Subsidiary;

(18) any Investment in any Subsidiary Guarantor in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;

(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (i) $20.0 million and (ii) 15.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis) so long as on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto;

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

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable Law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(26) any Investment, constituting Indebtedness, by the Borrower or a Subsidiary Guarantor in a Restricted Subsidiary that is not a wholly-owned Subsidiary, the net proceeds of which are used by such Restricted Subsidiary to make any Capital Expenditure for the purpose of increasing the earnings capacity in such Restricted Subsidiary, in a Similar Business; *provided* that (i) such Investment is secured by a first priority Lien on all of the assets and property of such Restricted Subsidiary that would constitute ABL Priority Collateral if such Restricted Subsidiary were a Guarantor (prior to all Liens on such assets and property that would constitute Term Priority Collateral if such property or assets were Collateral) and (ii) the assets and property of such Restricted Subsidiary (other than assets and property that would constitute Term Priority Collateral if such assets and property were Collateral) are not otherwise subject to any Lien other than Permitted Restricted Subsidiary Liens;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) [reserved];

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Borrower, or any Subsidiary of the Borrower in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;

(31) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens";

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;

(33) any other Investments if on a *pro forma* basis after giving effect to such Investment, the Specified Investment Payment Conditions shall be satisfied with respect thereto; and

(34) Permitted Bond Hedge Transactions.

"**Permitted Liens**" means, with respect to any Person:

(1) Liens created pursuant to any Loan Document;

(2) Liens, pledges or deposits made in connection with:

(a) workers' compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations,

(b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or

(c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (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, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(3) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction, mechanics' or other similar Liens, or landlord Liens specifically created by contract (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

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

(6) survey exceptions, encumbrances, covenants, conditions, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television 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 or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person;

(7) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to clause (5), (7), (14), (15) or (16) of Section 7.02(b); *provided* that:

(a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (14) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), *plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness, Disqualified Stock or Preferred Stock incurred under clause (5) or (14) of Section 7.02(b);

(b) [reserved];

(c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (5) extend only to the assets so purchased, constructed, replaced, leased or improved and proceeds and products thereof; *provided further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty;

(d) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to clause (15) are solely on acquired property or the assets of the acquired entity and any such Liens on ABL Priority Collateral are subordinated to the Liens on ABL Priority Collateral securing Obligations and subject to the terms of the ABL Intercreditor Agreement; and

(e) Liens securing obligations in respect of Indebtedness permitted to be incurred pursuant to such clause (15), after giving *pro forma* effect to such Indebtedness secured by such Lien and the application of the net proceeds therefrom, the Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, would (a) be no less than the Senior Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Indebtedness secured by such Lien or (b) not exceed 2.50 to 1.00; *provided* any such Liens on ABL Priority Collateral are subordinated to the Liens on ABL Priority Collateral securing Obligations and subject to the terms of the ABL Intercreditor Agreement.

(8) Liens existing, or provided for under binding contracts existing, on the Closing Date, other than Liens securing obligations under the Loan Documents, the Term Facility, the Senior Secured Notes and the related guarantees issued on the Closing Date (*provided* that any such Lien securing obligations in an aggregate amount on the Closing Date in excess of $5.0 million shall be set forth on Schedule 7.01);

(9) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(10) Liens on property or other assets at the time the Borrower or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Borrower or any Restricted Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Borrower or another Restricted Subsidiary permitted to be incurred in accordance with Section 7.02;

(12) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services which Liens shall be on non- ABL Priority Collateral unless securing Designated Hedge Obligations or Designated Cash Management Services Obligations;

(13) Liens on specific items of inventory excluded from the Borrowing Base or other goods and proceeds of any Person securing such Person's accounts payable or similar obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies or services) that do not either (a) materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or (b) secure any Indebtedness;

(15) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) [reserved];

(19) Liens to secure any modification, refinancing, refunding, extension, renewal, replacement or defeasance (or successive modification, refinancing, refunding, extensions, renewals, replacements or defeasances) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (7), (8), (9), (10), (39), (47) or this clause (19) of this definition; *provided* that: (a) such new Lien will be limited to all or part of the same property that secured the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and (b) the Indebtedness, Disqualified Stock or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness, Disqualified Stock or Preferred Stock described under such clauses (7), (8), (9), (10), (39), (47) or this clause (19) at the time the original Lien became a Permitted Lien hereunder, *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so modified, refinanced, extended, replaced, refunded, renewed or defeased, *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the modification, extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock; *provided, further* that that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clause (7) or (39), the principal amount of any Indebtedness incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clause (7) or (39) and not this clause (19) for purposes of determining the principal amount of Indebtedness outstanding under clause (7) or (39); *provided further* that any such Liens on ABL Priority Collateral must be subordinated to the Liens on ABL Priority Collateral securing Obligations and must be subject to the terms of the ABL Intercreditor Agreement;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) other Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) $50.0 million and (ii) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of incurrence of such Lien for the most recently ended Test Period (calculated on a *pro forma* basis), which shall be subject to the Collateral Trust Agreement and the ABL Intercreditor Agreement;

(22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04;

(31) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located; *provided* such ground leases, subleases, licenses or sublicenses, do not materially impair the use of the remainder of the real property;

(32) Liens in connection with the Specified Sale-Leaseback Transaction and any leasehold mortgage or similar Lien on the associated lease;

(33) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(36) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Cash Equivalents used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(39) Liens on all or any portion of the Collateral (but no other assets) to secure the Pari Passu Lien Obligations in an amount not to exceed the Pari Passu Secured Debt Cap solely to the extent such Liens are subject to the Collateral Trust Agreement and the ABL Intercreditor Agreement and provided that such Indebtedness is permitted to be incurred under Section 7.02(b)(2)(ii) and 7.02(b)(3);

(40) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by the title insurance reports or policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(44) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(46) zoning, building and other similar land use restrictions, including site plan agreements, development agreements and contract zoning agreements; *provided* that such restrictions and agreements are complied with;

(47) (a) Liens on the Collateral in favor of the Pari Collateral Agent securing Pari Passu Lien Obligations in respect of the Senior Secured Notes and Guarantees thereof (but excluding any "Additional Notes" under the Senior Secured Notes Indenture and related guarantees), solely to the extent such Liens are subject to the Collateral Trust Agreement and the ABL Intercreditor Agreement;

(48) Liens on the assets of Restricted Subsidiaries that are not Loan Parties securing Indebtedness or other obligations of such Restricted Subsidiaries or any other Restricted Subsidiaries that are not Loan Parties that is permitted by Section 7.02 or otherwise not prohibited by this Agreement;

(49) Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable Law;

(50) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or Arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose; and

(51) any Lien contemplated by clause (26) of the definition of "Permitted Investments".

If any Liens are incurred to secure obligations incurred to refinance obligations initially incurred in reliance on a Basket measured by reference to a percentage of Consolidated EBITDA, and such refinancing would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, *plus* any accrued and unpaid interest on the Indebtedness (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness), any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock.

For purposes of this definition, the term "Indebtedness" will be deemed to include interest and other obligations payable on and with respect to such Indebtedness.

"**Permitted Ratio Debt**" has the meaning specified in Section 7.02(a).

"**Permitted Restricted Subsidiary Liens**" means clauses (2) through (6), (7) (with respect to clauses (5), (7) (14), (15) or (16) of Section 7.02(b); *provided* that, with respect to such clause (14), only with respect to such clause (5)), (9) through (18), (19) (with respect to clauses (7), (8), (9) and (10)), (20) through (32), (34) through (38), (40), (42) through (47), (51) and (52) of the definition of "Permitted Liens".

"**Permitted Warrant Transaction**" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Borrower's or a Parent Company's common equity sold by the Borrower or a Parent Company substantially concurrently with a related Permitted Bond Hedge Transaction.

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

"**Phase II Project**" means any capacity addition, line extension or addition of value-added product facilities, in a Similar Business, at the steel mini-mill located in Mississippi County, Arkansas.

"**Phase II Project Costs**" means all costs and expenses to be incurred by Holdings, the Borrower or any Restricted Subsidiary in connection with the Development of the Phase II Project, and incurred after the Closing Date, including, without limitation, the purchase of equipment and related services, the training of personnel relating to the Phase II Project, the financing of the Phase II Project, including interest expense incurred during Development, and activities reasonably related thereto.

"**Plan**" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

"**Plan Asset Regulations**" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"**Platform**" has the meaning specified in Section 6.02.

"**Pledged Collateral**" has the meaning specified in the Security Agreement.

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

"**Principal Office**" means, for each of Administrative Agent, Swing Line Lender and Issuing Bank, such Person's "Principal Office" as set forth on Schedule 10.02, or such other office or office of a third party or sub-agent, as appropriate, as such Person may from time to time designate in writing to Borrower, Administrative Agent and each Lender.

"**Prior Claims**" means all Liens created by applicable law (in contrast with Liens voluntarily granted) (excluding pursuant to the Act 9 Bond Documents) that rank or are capable of ranking prior or pari passu with the Liens of the Collateral Agent created under the Collateral Documents (or similar Liens under applicable law), against all or part of the assets of any Loan Party, including for amounts owing for wages, vacation pay, severance pay, employee source deductions and contributions, goods and services taxes, sales taxes, harmonized sales taxes, municipal taxes, income taxes, VAT, workers' compensation, unemployment insurance, pension plan or fund obligations (including pension plan deficits) or other statutory deemed trusts or overdue rents.

"**Private-Side Information**" means any information with respect to Holdings and its Subsidiaries that is not Public-Side Information.

"**Pro Rata Share**" means with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender or any Letters of Credit issued or participations purchased therein by any Lender or any participations in any Swing Line Loans purchased by any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender by (b) the aggregate Revolving Exposure of all Lenders.

"**Protective Advance**" as defined in Section 2.10(1).

"**PTE**" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Public Company Costs**" means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Borrower's or its Restricted Subsidiaries' initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

"**Public Lender**" has the meaning specified in Section 6.02.

"**Public-Side Information**" means (i) at any time prior to Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that is (a) of a type that would be required by applicable Law to be publicly disclosed in connection with an issuance by Holdings or any of its Subsidiaries of its debt or equity securities pursuant to a registered public offering made at such time or (b) not material to make an investment decision with respect to securities of Holdings or any of its Subsidiaries (for purposes of United States federal and state securities laws), and (ii) at any time on and after Holdings or any of its Subsidiaries becoming the issuer of any Traded Securities, information that does not constitute material non-public information (within the meaning of United States federal and state securities laws) with respect to Holdings or any of its Subsidiaries or any of their respective securities.

"**Purchase Money Obligations**" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"**QFC Credit Support**" has the meaning assigned to such term in Section 10.27.

"**Qualified Capital Contribution**" means cash equity capital contributions to, or cash proceeds from the issuance of Capital Stock in, Top Parent, which Top Parent, upon receipt, contributes to Holdings, which in turn, upon receipt, contributes to the Borrower as a cash common equity capital contribution to, or common Capital Stock in, the Borrower.

" **Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10.0 million at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualified Equity Interests**" means any Equity Interests that are not Disqualified

Stock.

"**Qualified Proceeds**" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"**Qualifying IPO**" means the issuance by the Borrower or any Parent Company of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S- 8) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act (whether alone or in connection with a secondary public offering).

"**Quarterly Average Excess Availability**" means, for any fiscal quarter, the average for such fiscal quarter of the daily amounts determined as of 5:00 p.m. (New York City time) for each day during such fiscal quarter expressed as a percentage equivalent to a fraction
(a) the numerator of which is the Excess Availability at such time and (b) the denominator of which is the Maximum Credit in effect at such time.

"**Quarterly Average Facility Utilization**" means, for any fiscal quarter, the average for such fiscal quarter of the daily amounts determined as of 5:00 p.m. (New York City time) for each day during such fiscal quarter expressed as a percentage equivalent to a fraction
(a) the numerator of which is the sum of (i) the aggregate principal amount of all Revolving Loans outstanding at such time and (ii) the Letter of Credit Usage at such time and (b) the denominator of which is the Maximum Credit in effect at such time.

"**Quarterly Financial Statements**" means the unaudited consolidated balance sheets and related unaudited consolidated statements of income and cash flows of the Borrower and its Subsidiaries for the fiscal quarters ended March 31, 2017 and June 30, 2017.

"**Rating Agencies**" means Moody's and S&P, or if Moody's or S&P (or both) does not make a rating on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody's or S&P (or both), as the case may be.

"**Refinance**" has the meaning assigned in the definition of "Refinancing Indebtedness" and "**Refinancing**" and "**Refinanced**" have meanings correlative to the foregoing.

"**Refinanced Debt**" has the meaning assigned to such term in the definition of "Refinancing Indebtedness."

"**Refinancing Indebtedness**" means (x) Indebtedness incurred by the Borrower or any Restricted Subsidiary, (y) Disqualified Stock issued by the Borrower or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease ("**Refinance**") any Indebtedness, Disqualified Stock or Preferred Stock, including any Refinancing Indebtedness, so long as:

(1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the "**Refinanced Debt**"), *plus* (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, *plus* (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the "**Incremental Amounts**");

(2) such Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and

(b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the Maturity Date);

(3) to the extent such Refinancing Indebtedness Refinances (a) Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 7.05, such Refinancing Indebtedness is subordinated to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt or (b) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;

(4) such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and

(5) such Refinancing Indebtedness shall not be secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not secure the Refinanced Debt being Refinanced (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property);

provided that Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Borrower;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(c) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

provided further that (x) clause (2) of this definition will not apply to any Refinancing of any Indebtedness other than Indebtedness incurred under clauses (2), (3) and (32) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof), Disqualified Stock and Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary "rollover" provisions and (y) assuming such credit facility were to be extended pursuant to such "rollover" provisions, such extended credit facility would comply with clause (2) of this definition).

"**Refunded Swing Line Loans**" has the meaning specified in Section 2.02(2)(iv).

"**Refunding Capital Stock**" has the meaning specified in Section 7.05(b)(2).

"**Register**" has the meaning specified in Section 2.12.

"**Registered Equivalent Notes**" means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"**Reimbursement Date**" has the meaning specified in Section 2.03(4).

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

"**Related Indemnified Person**" of an Indemnitee means (1) any controlling Person or controlled Affiliate of such Indemnitee, (2) the respective directors, officers, partners, employees, advisors or successors of such Indemnitee or any of its controlling Persons or controlled Affiliates and (3) the respective agents, trustees and other representatives of such Indemnitee or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling Person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation of this Agreement or the syndication of the Facility. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"**Related Person**" means, with respect to any Person, (a) any Affiliate of such Person, (b) the respective directors, officers, partners, employees, advisors, agents, trustees and other representatives of such Person or any of its Affiliates and (c) the successors and permitted assigns of such Person or any of its Affiliates.

"**Relevant Governmental Body**" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"**Release**" means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into or migration through the Environment.

"**Rent Reserve**" means, with respect to any real property leased by a Loan Party on which any Inventory is located (other than any such leased real property in respect of which the Administrative Agent shall have received a Collateral Access Agreement executed by the applicable landlord), an amount equal to up to three months' rental expense for such leased real property less any security deposit or other payment security delivered to the applicable landlord (evidence of which has been provided to Administrative Agent) or such lesser amount approved by the Administrative Agent.

"**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 thirty (30) day notice period has been waived.

"**Reporting Trigger Date**" means the last day of the fiscal quarter ending on or after June 30, 2018 on which Borrower has cumulative Consolidated EBITDA for the period commencing on the Closing Date and ending on the last day of such fiscal quarter that is no less than 90% of the Consolidated EBITDA projected by Borrower for such period as set forth in the projections delivered to the Administrative Agent prior to the Closing Date.

"**Required Lenders**" means, at any time, Lenders having or holding Revolving Exposure representing more than 50% of the sum of the Revolving Exposure of all the Lenders at such time; provided, that if two (2) or more unaffiliated Lenders exist, then the requirement shall be at least two (2) unaffiliated Lenders having or holding Revolving Exposure representing more than 50% of the sum of the Revolving Exposure of all Lenders at such time; provided, further, that the amount of Revolving Exposure shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure of such Defaulting Lender.

"**Reserves**" means, collectively, (a) the Rent Reserve, (b) the Designated Pari Cash Management Services Reserves, (c) the Designated Pari Hedge Reserves, (d) the Dilution Reserve, (e) the Royalty Reserve and (f) without duplication (including with respect to any items that are otherwise addressed through eligibility criteria), any and all other reserves that the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including reserves for accrued and unpaid interest on the Obligations, contingent liabilities of any Loan Party, reserves for uninsured losses of any Loan Party, reserves to cover any Prior Claims, reserves for political risks or other risks (including risks of natural disasters) in respect of jurisdictions of customer locations, reserves for warehousemen's, consignee's and other bailee's charges (except, in the case of any warehouseman or other bailees having possession of any Inventory, if such warehouseman or other bailee shall have delivered to the Administrative Agent an executed Collateral Access Agreement pursuant to which, among other things, it shall have waived or subordinated, in a manner reasonably satisfactory to the Administrative Agent, any rights and claims it has to such Inventory for any service charges or other amounts payable to it), reserves for freight charges, reserves for changes in the determination of the saleability or realization values of Inventory, reserves for uninsured, underinsured, unindemnified or underindemnified liabilities or potential liabilities with respect to any litigation, reserves for export or import restrictions, and reserves for Taxes, fees, assessments and other governmental charges) with respect to any Collateral, any Account Debtor or any Loan Party.

"**Resolution Authority**" means any EEA Resolution Authority or UK Resolution Authority.

"**Responsible Officer**" means, with respect to a Person, the chief executive officer, chief operating officer, president, executive vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. With respect to any document delivered by a Loan Party on the Closing Date, Responsible Officer includes any secretary or assistant secretary of such 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 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. Unless otherwise specified, all references herein to a "Responsible Officer" shall refer to a Responsible Officer of the Borrower.

"**Restricted Investment**" means any Investment other than any Permitted Investment(s).

"**Restricted Payment**" has the meaning specified in Section 7.05.

"**Restricted Subsidiary**" means, at any time, any direct or indirect Subsidiary of the Borrower (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided further* that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of "Restricted Subsidiary." Wherever the term "Restricted Subsidiary" is used herein with respect to any Subsidiary of a referenced Person that is not the Borrower, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Borrower on a *pro forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Borrower (unless such transaction would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a *pro forma* basis in accordance with this Agreement).

"**Revolving Commitment**" means the commitment of a Lender to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit, Swing Line Loans and Protective Advances hereunder, and "**Revolving Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Revolving Commitment, if any, is set forth on Schedule 2.01 or in the applicable Assignment and Assumption or Joinder Agreement, as applicable, subject to any increase pursuant to Section 2.15 or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the First Amendment Effective Date is $350,000,000.

"Revolving Commitment Period" means the period from the Closing Date to but excluding the Revolving Commitment Termination Date.

"**Revolving Commitment Termination Date**" means the earlier to occur of (a) the Maturity Date and (b) the date on which all the Revolving Commitments are terminated or permanently reduced to zero pursuant hereto.

"**Revolving Exposure**" means, with respect to any Lender, Swing Line Lender or Issuing Bank, as applicable, and as of any date of determination, (a) prior to the termination of the Revolving Commitments, that Lender's Revolving Commitment; and (b) after the termination of the Revolving Commitments (or which respect to determining each Lender's exposure under the Revolving Commitments), the sum of (i) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (ii) in the case of Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (iii) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (iv) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders), (v) the aggregate amount of all participations therein by that Lender in any outstanding Swing Line Loans, and (vi) the aggregate amount of all participations therein by that Lender in any outstanding Protective Advances.

"**Revolving Lender**" means a Lender having a Revolving Commitment.

"**Revolving Loan**" means a Loan made by a Lender to Borrower pursuant to Section 2.01 and/or Section 2.15.

"**Revolving Loan Note**" means a promissory note in the form of Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Royalty Reserve**" means, at any time, a reserve equal to the sum of (a) accrued but unpaid royalties due to third parties for the sale of any Inventory subject to any license of intellectual property plus (b) unpaid royalties due to third parties for finished goods Inventory on hand subject to any license of intellectual property.

"**S&P**" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"**Sale-Leaseback Transaction**" means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a third Person in contemplation of such leasing. The net proceeds of any Sale-Leaseback Transaction will be determined giving effect to transaction expenses and the tax effect of such transactions (including taxes paid or payable and tax attributes used as a result of such transactions).

"**Same Day Funds**" means disbursements and payments in immediately available funds.

"**Sanctioned Entity**" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

"**Sanctioned Person**" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"**Sanctions**" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the U.S., including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over the Agent, any Lender or any Loan Party or any of their respective Subsidiaries or Affiliates.

"**SEC**" means the U.S. Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

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

"**Secured Parties**" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, the Lender Counterparties, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.07.

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

"**Security Agreement**" means, collectively, the Pledge and Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

"**Senior Secured Net Leverage Ratio**" means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding as of the last day of such Test Period, *minus,* the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Sub-sidiaries on such date that (x) would not appear as "restricted" on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (y) are restricted in favor of the Facility or the Pari Passu Lien Obligations to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a pro forma basis with such pro forma adjustments as are appropriate and consistent with Section 1.07.

" **Senior Secured Notes**" means the $600.0 million 7.250% senior secured notes of the Borrower due 2025.

"**Senior Secured Notes Indenture**" means the Indenture for the Senior Secured Notes, dated as of the Closing Date, between the Borrower, the Co-Issuer, U.S. Bank National Association, as trustee (the "**Trustee**"), and the Pari Collateral Agent, as the same may be amended, modified, supplemented, replaced or refinanced to the extent not prohibited by this Agreement.

"**Significant Subsidiary**" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date.

"**Similar Business**" means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Closing Date. The Mid-River Terminal, as described on Schedule 1.01(4), is considered to be complementary to the business of the Borrower for purposes of this definition.

"**SOFR**" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"**Solvent**" and "**Solvency**" mean, with respect to any Person on any date of determination, that on such date:

(1) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise,

(2) the present fair saleable value of the property of such Person is 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,

(3) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and

(4) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

"**Specified Event of Default**" means (a) any Event of Default arising under Section 8.01(1) or 8.01(6), (b) any Event of Default arising under Section 8.01(2) from the failure to deliver a Borrowing Base Certificate by the time required hereunder, (c) any Event of Default arising under Section 8.01(4) from any material inaccuracy in any Borrowing Base Certificate, (d) any Event of Default arising from a breach of Section 6.18 and (e) any Event of Default arising under Section 8.01(2) arising from a breach of Section 7.12.

"**Specified Investment Payment Conditions**" means, at any time of determination with respect to any Investment, the requirement that (a) no Event of Default shall have occurred and be continuing or would arise as a result of such Investment, (b) after giving *pro forma* effect to such Investment, (i) Excess Availability shall have been greater than the greater of 15% of the Line Cap and $20,000,000 at all times during the period of 30 consecutive days ended on the date of such Investment and (ii) the Fixed Charge Coverage Ratio as of the last day of the most recently ended Test Period (regardless whether a Covenant Period has occurred and is continuing) shall be not less than 1.00 to 1.00; provided, that the provisions of this clause (b)(ii) shall not be applicable if Excess Availability, calculated in accordance with clause (b)(i) hereof, immediately after giving *pro forma* effect to such Investment, is greater than the greater of 20% of the Line Cap and $25,000,000 and (c) the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower certifying that all the requirements of the Specified Investment Payment Conditions have been satisfied with respect to such Investment and including reasonably detailed calculations demonstrating satisfaction of such requirements.

"**Specified Pari Passu Lien Debt**" means the Indebtedness incurred pursuant to the Specified Pari Passu Lien Debt Documents.

"**Specified Pari Passu Lien Debt Documents**" means (a) any indenture, credit agreement or other agreement described in the Collateral Trust Joinder delivered by the Specified Pari Passu Lien Debt Representative governing Funded Debt that constitutes Pari Passu Lien Debt and (b) any other indenture, credit agreement or other agreement entered into subsequent to the delivery of the Collateral Trust Joinder described in clause (a) above governing another Series of Pari Passu Lien Debt (as defined in the Collateral Trust Agreement) for which the Specified Pari Passu Lien Debt Representative maintains the transfer register and is appointed as a representative of the Pari Passu Lien Debt (as defined in the Collateral Trust Agreement) (for purposes related to the administration of the Pari Passu Lien Security Documents (as defined in the Collateral Trust Agreement)) pursuant to such indenture, credit agreement or other agreement and which governs Funded Debt that constitutes Pari Passu Lien Debt.

"**Specified Pari Passu Lien Debt Representative**" means KfW IPEX-Bank GmbH, whether acting in its own capacity or as agent to the lenders under any Specified Pari Passu Lien Debt Document or any of its Affiliates, or any other such representative that has been designated as "Specified Pari Passu Lien Debt Representative" by the Borrower in accordance with the Collateral Trust Agreement, that delivers a Collateral Trust Joinder in the form of Exhibit B to the Collateral Trust Agreement.

"**Specified Restricted Payment Conditions**" means, at any time of determination with respect to any Restricted Payment, the requirement that (a) no Event of Default shall have occurred and be continuing or would arise as a result of such Restricted Payment, (b) after giving *pro forma* effect to such Restricted Payment, (i) Excess Availability shall have been greater than the greater of 20% of the Line Cap and $20,000,000 at all times during the period of 30 consecutive days ended on the date of such Restricted Payment, and (ii) the Fixed Charge Coverage Ratio as of the last day of the most recently ended Test Period (regardless whether a Covenant Period has occurred and is continuing) shall be not less than 1.00 to 1.00; provided, that the provisions of this clause (b)(ii) shall not be applicable if Excess Availability, calculated in accordance with clause (b)(i) hereof, immediately after giving *pro forma* effect to such Restricted Payment, is greater than the greater of 25% of the Line Cap and $25,000,000 and (c) the Borrower shall have delivered to the Administrative Agent a certificate of a Financial Officer of the Borrower certifying that all the requirements of the Specified Restricted Payment Conditions have been satisfied with respect to such Restricted Payment and including reasonably detailed calculations demonstrating satisfaction of such requirements.

"**Specified Sale-Leaseback Transaction**" means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a Governmental Authority in contemplation of such leasing, and which is in connection with the purchase by the Borrower or an Affiliate of industrial development revenue bonds, or similar instruments, of a Governmental Authority and pursuant to which payments of principal, premiums and interest thereon are payable solely from income derived by such Governmental Authority from such leasing arrangement. The Specified Sale-Leaseback Transactions in effect as of the Closing Date are as provided in the Act 9 Bond Documents.

"**Specified Transaction**" means:

(1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Borrower, in each case, in connection with an acquisition or Investment,

(2) any designation of operations or assets of the Borrower or a Restricted Subsidiary as discontinued operations (as defined under GAAP),

(3) any Investment that results in a Person becoming a Restricted Subsidiary,

(4) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with this Agreement,

(5) any purchase or other acquisition of a business of any Person, or assets constituting a business unit, line of business or division of any Person,

(6) any Asset Sale (without regard to any de minimis thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,

(7) any operational changes identified by the Borrower that have been made by the Borrower or any Restricted Subsidiary during the Test Period,

(8) any borrowing of New Revolving Loans (or establishment of New Revolving Loan Commitments), or

(9) any Restricted Payment or other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a *pro forma* basis.

"**Sterling**" means the lawful currency of the United Kingdom.

"**Subordinated Indebtedness**" means any Indebtedness of any Loan Party that by its terms is subordinated in right of payment to the Obligations of such Loan Party arising under this Agreement or the Guaranty.

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

(1) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"**Subsidiary Guarantor**" means any Guarantor other than Holdings.

"**Successor Borrower**" has the meaning specified in Section 7.03(4).

"**Successor Holdings**" has the meaning specified in Section 7.03(5).

"**Supermajority Lenders**" means, at any time, Lenders having or holding Revolving Exposure representing more than 66-2/3% of the sum of the Revolving Exposure of all the Lenders at such time; provided, that if two (2) or more unaffiliated Lenders exist, then the requirement shall be at least two (2) unaffiliated Lenders having or holding Revolving Exposure representing more than 66-2/3% of the sum of the Revolving Exposure of all the Lenders at such time; provided, further that the amount of Revolving Exposure shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure of such Defaulting Lender.

"**Supplemental Administrative Agent**" and "**Supplemental Administrative Agents**" have the meanings specified in Section 9.15(1).

"**Supported QFC**" has the meaning assigned to such term in Section 10.27.

"**Swap Obligation**" has the meaning specified in the definition of "Excluded Swap Obligation."

"**Swing Line Lender**" means Goldman Sachs in its capacity as Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

"**Swing Line Loan**" means a Loan made by Swing Line Lender to Borrower pursuant to Section 2.02.

"**Swing Line Note**" means a promissory note in the form of Exhibit B-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Swing Line Sublimit**" means the lesser of (a) $22,500,000, and (b) the aggregate unused amount of Revolving Commitments then in effect.

"**Syndication Agent**" means Goldman Sachs Bank USA, in its capacity as syndication agent under this Agreement.

"**Tax**" means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

"**Tax Distributions**" has the meaning specified in Section 7.05(b)(14)(b).

"**Tax Group**" has the meaning specified in Section 7.05(b)(14)(b).

"**Tax Indemnitee**" as defined in Section 3.01(5).

"Term Agent" means Goldman Sachs Bank USA, in its capacity as the administrative agent under the Term Credit Agreement, and any successor administrative agent permitted pursuant to the terms thereof, hereof and in the ABL Intercreditor Agreement and Collateral Trust Agreement, or any similar agent under any replacement or refinancing of the Term Credit Agreement.

"Term Credit Agreement" means the Credit Agreement, dated as of the Closing Date, by and among Borrower, Holdings, certain Subsidiaries of Borrower, as guarantors, the lenders party thereto from time to time, Term Agent, and the other parties thereto, as may be amended, modified, supplemented, refinanced, restated, or replaced in accordance with the terms of the ABL Intercreditor Agreement.

"Term Documents" means the Term Credit Agreement and each other instrument or agreement executed in connection with the Term Credit Agreement (including all security agreements, collateral assignments, mortgages, control agreements or other grants or transfers for security in favor of the Pari Collateral Agent, for the benefit of the holders of the Pari Passu Lien Obligations) and any instrument or agreement executed in connection with any refinancings and replacements thereof to the extent permitted under Section 7.02(b)(2), as each such instrument or agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"**Term Facility**" means any facility provided by the lenders pursuant to the Term Credit Agreement.

"**Term Lender**" means any "Lender" under (and as defined in) the Term Credit Agreement.

"**Term Loan**" has the meaning given such term in the Term Credit Agreement.

"**Term Obligations**" means the "Obligations" (as defined in the Term Credit Agreement).

"**Term Priority Collateral**" has the meaning assigned to the term "Fixed Asset Priority Collateral" in the ABL Intercreditor Agreement.

"**Term SOFR**" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Termination Conditions" has the meaning assigned to such term in Section 9.12(4).

"**Test Period**" in effect at any time means the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which, subject to Section 1.07(1), financial statements for each quarter or fiscal year in such period have been or are required to be delivered pursuant to Section 6.01(1) or (2), as applicable; *provided* that, notwithstanding the foregoing, (a) prior to the first date that financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2), the Test Period in effect shall be the period of four consecutive full fiscal quarters of the Borrower ended prior to the Closing Date for which financial statements would have been required to be delivered hereunder had the Closing Date occurred prior to the end of such period, (b) solely for purposes of Section 7.12, for the period ending December 31, 2017, the Test Period shall be the period of two consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period), and (c) solely for purposes of Section 7.12, for the period ending March 31, 2018, the Test Period shall be the period of three consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period).

"**Threshold Amount**" means $25.0 million.

"**Top Parent**" means Big River Steel Holdings LLC, a Delaware limited liability company.

"**Top Parent Pledge Agreement**" means that certain ABL Pledge Agreement dated as of the Closing Date by Top Parent in favor of the Collateral Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Total Assets**" means, at any time, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower) (and, in the case of any determination relating to any Specified Transaction, on a *pro forma* basis including any property or assets being acquired in connection therewith).

"**Total Outstandings**" means the aggregate Outstanding Amount of all Loans.

"**Total Utilization of Revolving Commitments**" means, as at any date of determination, the sum of (a) the aggregate principal amount of all outstanding Revolving Loans, (b) the aggregate principal amount of all outstanding Swing Line Loans and Protective Advances, and (c) the Letter of Credit Usage.

"**Traded Securities**" means any debt or equity securities issued pursuant to a public offering or Rule 144A offering.

"**Transaction Expenses**" means any fees, expenses, costs or charges incurred or paid by the Investors, any Parent Company, Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, if any, and the repayment or refinancing of the Closing Date Refinanced Indebtedness.

"**Transactions** " means, collectively, the funding of the Closing Date Loans, the issuance of Letters of Credit (if any) hereunder on the Closing Date, the closing of the Term Facility and the funding of the Closing Date Term Loans, the issuance of the Senior Secured Notes on the Closing Date, the entry into the related security documents, the consummation of the Closing Date Refinancing and the payment of the Transaction Expenses.

"**Treasury Capital Stock**" has the meaning assigned to such term in Section 7.05(b)(2)(a).

"**Trustee**" has the meaning assigned to such term in the definition of Senior Secured Notes Indenture.

" **Type**" means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form 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.

"**Uniform Commercial Code**" or "**UCC**" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to the perfection or priority of any Lien on or otherwise with regard to any item or items of Collateral.

"**United States**" and "**U.S**." mean the United States of America.

"**United States Tax Compliance Certificate**" has the meaning specified in Section 3.01(4)(b)(iii).

"**Unrestricted Subsidiary**" means:

(1) any Subsidiary of the Borrower which at the time of determination is an Unrestricted Subsidiary (as designated by the Borrower, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Borrower may designate:

(a) any Subsidiary of the Borrower (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Borrower or any Subsidiary (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that:

(i) such designation shall be deemed an Investment and such Investment complies with Section 7.05;

(ii) each of (i) the Subsidiary to be so designated and (ii) its Subsidiaries has not, at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Borrower or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary); and

(iii) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(b) any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that:

(i) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(ii) the Borrower could incur at least $1.00 of additional Permitted Ratio Debt.

Any such designation by the Borrower will be notified by the Borrower to the Administrative Agent by promptly filing with the Administrative Agent an Officer's Certificate certifying that such designation complied with the foregoing provisions. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time.

"**U.S. Lender**" means any Lender that is not a Foreign Lender.

"**U.S. Special Resolution Regime**" has the meaning assigned to such term in Section 10.27.

"**USA PATRIOT Act**" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"**Weekly Reporting Period**" means each period (a) commencing on any fifth consecutive Business Day when Excess Availability is less than the greater of 15.0% of the Line Cap and $ 20,000,000 and continuing until the first day thereafter on which Excess Availability shall have been greater than the greater of 15.0% of the Line Cap and $20,000,000 for at least 20 consecutive days (measured from, with respect to the Borrowing Base, the first Borrowing Base Reporting Date with respect to which Excess Availability exceeded the greater of 15.0% of the Line Cap and $20,000,000), (b) commencing on any day when a Specified Event of Default shall have occurred and continuing until the first day thereafter on which no Specified Event of Default shall have existed for at least 20 consecutive days or (c) commencing on any day elected by the Borrower until such later day elected by the Borrower which shall be no earlier than four consecutive weekly periods ending after the commencement of such period.

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

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(1) the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, *multiplied by* the amount of such payment, *by*

(2) the sum of all such payments;

provided that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the "**Applicable Indebtedness**"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

"**wholly owned**" or "**wholly-owned**" means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors' qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

"**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.

"**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.

"**Yen**" means the lawful currency of Japan.

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:

(1) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(2) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(3) References in this Agreement to an Exhibit, Schedule, Article, Section, Annex, clause or subclause refer (a) to the appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

(4) The term "including" is by way of example and not limitation.

(5) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(6) 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."

(7) 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.

(8) The word "or" is not intended to be exclusive unless expressly indicated otherwise.

(9) With respect to any Default or Event of Default, the words "exists," "is continuing" or similar expressions with respect thereto shall mean that the Default or Event of Default has occurred and has not yet been cured or waived.

(10) For purposes of determining compliance with the incurrence of any Refinancing Indebtedness that restricts the amount of such Indebtedness relative to the amount of Refinanced Debt, the Borrower and Restricted Subsidiaries may incur an incremental principal amount of Refinancing Indebtedness in such refinancing to the extent that the excess portion of the Refinancing Indebtedness would otherwise be permitted to be incurred in accordance with this Agreement. For purposes of determining compliance with the incurrence of any Indebtedness under Designated Revolving Commitments in reliance on compliance with any ratio, if on the date such Designated Revolving Commitments are established, the applicable ratio is satisfied after giving *pro forma* effect to the incurrence of the entire committed amount of then proposed Indebtedness thereunder, then such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with any ratio.

(11) For purposes hereof, unless otherwise specifically indicated, the term "consolidated" with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

SECTION 1.03 Accounting Terms. 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, except as otherwise specifically prescribed herein. Unless the context indicates otherwise, any reference to a "fiscal year" or a "fiscal quarter" shall refer to a fiscal year ending December 31 or fiscal quarter ending March 31, June 30, September 30 or December 31 of the Borrower. Any reference to a "fiscal month" shall refer to a calendar month. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Holdings, the Borrower or any of its Subsidiaries at "fair value," as defined therein.

SECTION 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, (1) all references herein to times of day shall be references to New York time (daylight or standard, as applicable) and (2) when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of "Interest Period") or performance shall extend to the immediately succeeding Business Day.

SECTION 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the Senior Secured Net Leverage Ratio and the Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this Section 1.07; *provided* that notwithstanding anything to the contrary in clauses (2), (3), (4) or (5) of this Section 1.07, when calculating the Fixed Charge Coverage Ratio for purposes of the Financial Covenant (other than for the purpose of determining *pro forma* compliance with the Financial Covenant), the events described in this Section 1.07 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to "Test Period" for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) (it being understood that for purposes of determining actual compliance (and not *pro forma* compliance) with the Financial Covenant, the reference to "Test Period" shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2)).

(2) For purposes of calculating any financial ratio or test (or Consolidated EBITDA or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then such financial ratio or test (or Consolidated EBITDA or Total Assets) shall be calculated to give *pro forma* effect for such Test Period as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period.

(3) Whenever *pro forma* effect is to be given to any Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from or relating to any Specified Transaction which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and "run-rate" means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target's compliance costs with public company requirements), whether prior to or following the Closing Date, net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (a) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (b) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty-four (24) months after the date of such Specified Transaction (or actions undertaken or implemented prior to the consummation of such Specified Transaction), and (c) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period.

(4) In the event that (a) the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced), (b) the Borrower or any Restricted Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Restricted Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Restricted Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Fixed Charge Coverage Ratio (or similar ratio), in which case such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period; *provided*, *however*, that at the election of the Borrower, the *pro forma* calculation will not give effect to any Indebtedness incurred or Disqualified Stock or Preferred Stock issued on such determination date pursuant to the provisions described in Section 7.02(b) (other than Section 7.02(b)(15) or Indebtedness secured pursuant to clause (39) of the definition of Permitted Liens).

(5) If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation of the Fixed Charge Coverage Ratio is made had been the Applicable Margin for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower may designate.

(6) Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, no *pro forma* effect shall be given to any discontinued operations (and the Consolidated EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

(7) Any determination of Total Assets shall be made by reference to the last day of the Test Period most recently ended for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) on or prior to the relevant date of determination.

(8) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (a) calculating any applicable ratio, Consolidated Net Income or Consolidated EBITDA in connection with the incurrence of Indebtedness, the issuance of Disqualified Stock or Preferred Stock, the creation of Liens, the making of any Asset Sale, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or the repayment of Indebtedness, Disqualified Stock or Preferred Stock, (b) determining compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom, (c) determining compliance with any provision of this Agreement which requires compliance with any representations and warranties set forth herein or (d) determining the satisfaction of all other conditions precedent to the incurrence of Indebtedness, the issuance of Disqualified Stock or Preferred Stock, the creation of Liens, the making of any Asset Sale, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or the repayment of Indebtedness, Disqualified Stock or Preferred Stock, in each case in connection with a Limited Condition Transaction, the date of determination of such ratio or other provisions, determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom, determination of compliance with any representations or warranties or the satisfaction of any other conditions shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**," which LCT Election may be in respect of one or more of clauses (a), (b), (c) and (d) above), be deemed to be the date the definitive agreements (or other relevant definitive documentation) for such Limited Condition Transaction are entered into (the "**LCT Test Date**"; provided, that any test requiring a specified level of Excess Availability shall be made on the date such Limited Condition Transaction is consummated). If on a *pro forma* basis after giving effect to such Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock, and the use of proceeds thereof), with such ratios and other provisions calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date for which internal financial statements are available, the Borrower could have taken such action on the relevant LCT Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless an Event of Default pursuant to Section 8.01(1), or, solely with respect to the Borrower, Section 8.01(6) shall be continuing on the date such Limited Condition Transaction is consummated. For the avoidance of doubt, (i) if, following the LCT Test Date, any of such ratios or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA or other components of such ratio) or other provisions at or prior to the consummation of the relevant Limited Condition Transactions, such ratios and other provisions will not be deemed to have been exceeded or failed to have been satisfied as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless, other than if an Event of Default pursuant to Section 8.01(1), or, solely with respect to the Borrower, Section 8.01(6), shall be continuing on such date, the Borrower elects, in its sole discretion, to test such ratios and compliance with such conditions on the date such Limited Condition Transaction or related Specified Transactions is consummated. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio, Basket availability or compliance with any other provision hereunder (other than actual compliance with the Financial Covenant) on or following the relevant LCT Test Date and prior to the earliest of the date on which such Limited Condition Transaction is consummated, the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction or the date the Borrower makes an election pursuant to clause (y) of the immediately preceding sentence, any such ratio, Basket or compliance with any other provision hereunder shall be calculated on a *pro forma basis* assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock, and the use of proceeds thereof) had been consummated on the LCT Test Date; *provided* that for purposes of any such calculation of the Fixed Charge Coverage Ratio, Consolidated Interest Expense will be calculated using an assumed interest rate for the Indebtedness to be incurred in connection with such Limited Condition Transaction based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Borrower in good faith. Notwithstanding anything in this Agreement or any Loan Document to the contrary, if the Borrower or its Restricted Subsidiaries (x) incurs Indebtedness, issues Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, makes Investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with any Limited Condition Transaction under a ratio-based Basket and (y) incurs Indebtedness, issues Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, Investments or Restricted Payments, designates any as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with such Limited Condition Transaction under a non-ratio-based Basket (which shall occur within five Business Days of the events in clause (x) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based Basket without regard to any such action under such non-ratio-based Basket made in connection with such Limited Condition Transaction.

SECTION 1.08 [Reserved].

SECTION 1.09 Guaranties of Hedging Obligations. Notwithstanding anything else to the contrary in any Loan Document, no non-Qualified ECP Guarantor shall be required to guarantee or provide security for Excluded Swap Obligations, and any reference in any Loan Document with respect to such non-Qualified ECP Guarantor guaranteeing or providing security for the Obligations shall be deemed to be all Obligations other than the Excluded Swap Obligations.

SECTION 1.10 Currency Generally.

(1) The Borrower shall determine in good faith the Dollar equivalent amount of any utilization or other measurement denominated in a currency other than Dollars for purposes of compliance with any Basket. For purposes of determining compliance with any Basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars, no Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Basket utilization occurs or other Basket measurement is made (so long as such Basket utilization or other measurement, at the time incurred, made or acquired, was permitted hereunder). Except with respect to any ratio calculated under any Basket, any subsequent change in rates of currency exchange with respect to any prior utilization or other measurement of a Basket previously made in reliance on such Basket (as the same may have been reallocated in accordance with this Agreement) shall be disregarded for purposes of determining any unutilized portion under such Basket.

(2) For purposes of determining the Senior Secured Net Leverage Ratio, the amount of Indebtedness and cash and Cash Equivalents shall reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

SECTION 1.11 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.

Article II

The Commitments and Borrowings

SECTION 2.01 Revolving Loans.

(1) Revolving Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender agrees to make Revolving Loans to the Borrower in Dollars in an aggregate principal amount that will not result in (i) such Lender's Revolving Exposure exceeding its Revolving Commitment or (ii) the Total Utilization of Revolving Commitments exceeding the lesser of (A) the Maximum Credit and (B) the Borrowing Base then in effect. Amounts borrowed pursuant to this Section 2.01(1) that are repaid or prepaid may, subject to the terms and conditions hereof, be reborrowed during the Revolving Commitment Period. Each Lender's Revolving Commitment shall terminate on the Revolving Commitment Termination Date.

(2) Borrowing Mechanics for Revolving Loans.

(i) Except pursuant to Section 2.03(4), Revolving Loans that are Base Rate Loans shall be made in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount, and Revolving Loans that are Eurodollar Rate Loans shall be in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount; provided that such Revolving Loans may be in an aggregate amount that is equal to the entire unused balance of the Maximum Credit or that is required to finance the reimbursement of a drawing under a Letter of Credit as contemplated by Section 2.03(4).

(ii) Subject to Section 4.02, whenever Borrower desires that Lenders make Revolving Loans, Borrower shall deliver to Administrative Agent a fully executed and delivered Funding Notice no later than 10:00 a.m. (New York City time) at least three Business Days in advance of the proposed Credit Date in the case of a Eurodollar Rate Loan, and at least one Business Day in advance of the proposed Credit Date in the case of a Revolving Loan that is a Base Rate Loan; provided that, if such Credit Date is the Closing Date, such Funding Notice may be delivered on the Closing Date with respect to Base Rate Loans and such period shorter than three Business Days as may be agreed by all Lenders with respect to Eurodollar Rate Loans. Except as otherwise provided herein, a Funding Notice for a Revolving Loan that is a Eurodollar Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date, and the Borrower shall be bound to make a borrowing in accordance therewith.

(iii) Notice of receipt of each Funding Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by Administrative Agent to each applicable Lender with reasonable promptness, but (provided Administrative Agent shall have received such notice by 10:00 a.m. (New York City time)) not later than 3:00 p.m. (New York City time) on the same day as Administrative Agent's receipt of such Notice from Borrower.

(iv) Each Lender shall make the amount of its Revolving Loan available to Administrative Agent not later than 12:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at the Principal Office of Administrative Agent. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Revolving Loans available to Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by Administrative Agent from Lenders to be credited to the account of Borrower at the Principal Office designated by Administrative Agent or such other account as may be designated in writing to Administrative Agent by Borrower.

SECTION 2.02 Swing Line Loans.

(1) General. During the Revolving Commitment Period, subject to the terms and conditions hereof, the Swing Line Lender agrees to make Swing Line Loans to the Borrower in Dollars in an aggregate principal amount at any time outstanding not to exceed the Swing Line Sublimit; provided that no Swing Line Loan shall be made if immediately after giving effect thereto the Total Utilization of Revolving Commitments would exceed the lesser of (i) the Maximum Credit and (ii) the Borrowing Base then in effect. Amounts borrowed pursuant to this Section 2.02 that are repaid or prepaid may, subject to the terms and conditions hereof, be reborrowed during the Revolving Commitment Period.

(2) Borrowing Mechanics for Swing Line Loans.

(i) Swing Line Loans shall be made in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount.

(ii) Subject to Section 4.02, whenever Borrower desire that Swing Line Lender make a Swing Line Loan, Borrower shall deliver to Administrative Agent a Funding Notice no later than 11:00 a.m. (New York City time) on the proposed Credit Date.

(iii) Swing Line Lender shall make the amount of its Swing Line Loan available to Administrative Agent not later than 2:00 p.m. (New York City time) on the applicable Credit Date by wire transfer of same day funds in Dollars, at Administrative Agent's Principal Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of such Swing Line Loans available to Borrower on the applicable Credit Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Swing Line Loans received by Administrative Agent from Swing Line Lender to be credited to the account of Borrower at Administrative Agent's Principal Office, or to such other account as may be designated in writing to Administrative Agent by Borrower.

(iv) With respect to any Swing Line Loans which have not been voluntarily prepaid by Borrower pursuant to Section 2.05(1), Swing Line Lender shall, on a weekly or a more frequently than weekly basis when any Swing Line Loan is outstanding, deliver to Administrative Agent (with a copy to Borrower), no later than 1:00 p.m. (New York City time) at least one Business Day in advance of the proposed Credit Date, a notice (which shall be deemed to be a Funding Notice given by Borrower) requesting that each Lender holding a Revolving Commitment make Revolving Loans that are Base Rate Loans to Borrower on such Credit Date in an amount equal to the amount of such Swing Line Loans (the "Refunded Swing Line Loans") outstanding on the date such notice is given which Swing Line Lender requests Lenders to prepay. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by the Lenders other than Swing Line Lender shall be immediately delivered by Administrative Agent to Swing Line Lender (and not to Borrower) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender to Borrower, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note of Swing Line Lender but shall instead constitute part of Swing Line Lender's outstanding Revolving Loans to Borrower and shall be due under the Revolving Loan Note issued by Borrower to Swing Line Lender. Borrower hereby authorizes Administrative Agent and Swing Line Lender to charge Borrower's accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by Lenders, including the Revolving Loans deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of Borrower from Swing Line Lender in bankruptcy, by assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by Section 2.14.

(v) If for any reason Revolving Loans are not made pursuant to Section 2.02(2)(iv) in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of any outstanding Swing Line Loans on or before the third Business Day after demand for payment thereof by Swing Line Lender, each Lender holding a Revolving Commitment shall be deemed to, and hereby agrees to, have purchased a participation in such outstanding Swing Line Loans, and in an amount equal to its Pro Rata Share of the applicable unpaid amount together with accrued interest thereon. Upon one Business Day's notice from Swing Line Lender, each Lender holding a Revolving Commitment shall deliver to Swing Line Lender an amount equal to its respective participation in the applicable unpaid amount in same day funds at the Principal Office of Swing Line Lender. In order to evidence such participation each Lender holding a Revolving Commitment agrees to enter into a participation agreement at the request of Swing Line Lender in form and substance reasonably satisfactory to Swing Line Lender. In the event any Lender holding a Revolving Commitment fails to make available to Swing Line Lender the amount of such Lender's participation as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Lender together with interest thereon for three Business Days at the rate customarily used by Swing Line Lender for the correction of errors among banks and thereafter at the Base Rate, as applicable.

(vi) Notwithstanding anything contained herein to the contrary, (1) each Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to the second preceding paragraph and each Lender's obligation to purchase a participation in any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against Swing Line Lender, any Loan Party or any other Person for any reason whatsoever; (B) the occurrence or continuation of a Default or Event of Default; (C) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Loan Party; (D) any breach of this Agreement or any other Loan Document by any party thereto; or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Lender are subject to the condition that Swing Line Lender had not received prior notice from Borrower or the Required Lenders that any of the conditions under Section 4.02 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, were not satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made; and (2) Swing Line Lender shall not be obligated to make any Swing Line Loans (A) if it has elected not to do so after the occurrence and during the continuation of a Default or Event of Default, (B) it does not in good faith believe that all conditions under Section 4.02 to the making of such Swing Line Loan have been satisfied or waived by the Required Lenders or (C) at a time when any Lender is a Defaulting Lender unless Swing Line Lender has entered into arrangements satisfactory to it and Borrower to eliminate Swing Line Lender's risk with respect to the Defaulting Lender's participation in such Swing Line Loan, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the outstanding Swing Line Loans in an amount not less than the Minimum Collateral Amount.

(3) Resignation and Removal of Swing Line Lender. Swing Line Lender may resign as Swing Line Lender upon 30 days prior written notice to Administrative Agent, Lenders and Borrower. Swing Line Lender may be replaced at any time by written agreement among Borrower, Administrative Agent, the replaced Swing Line Lender (provided that no consent will be required if the replaced Swing Line Lender has no Swing Line Loans outstanding) and the successor Swing Line Lender. Administrative Agent shall notify the Lenders of any such replacement of Swing Line Lender. At the time any such replacement or resignation shall become effective, (i) Borrower shall prepay any outstanding Swing Line Loans made by the resigning or removed Swing Line Lender, (ii) upon such prepayment, the resigning or removed Swing Line Lender shall surrender any Swing Line Note held by it to Borrower for cancellation, and (iii) Borrower shall issue, if so requested by the successor Swing Line Lender, a new Swing Line Note to the successor Swing Line Lender, in the principal amount of the Swing Line Sublimit then in effect and with other appropriate insertions. From and after the effective date of any such replacement or resignation, (x) any successor Swing Line Lender shall have all the rights and obligations of a Swing Line Lender under this Agreement with respect to Swing Line Loans made thereafter and (y) references herein to the term "Swing Line Lender" shall be deemed to refer to such successor or to any previous Swing Line Lender, or to such successor and all previous Swing Line Lenders, as the context shall require.

SECTION 2.03 Issuance of Letters of Credit and Purchase of Participations Therein.

(1) Letters of Credit. During the Revolving Commitment Period, subject to the terms and conditions hereof, Issuing Bank agrees to issue Letters of Credit at the request and for the account of Borrower in the aggregate amount up to but not exceeding the Letter of Credit Sublimit; provided, (i) each Letter of Credit shall be denominated in Dollars; (ii) the stated amount of each Letter of Credit shall not be less than $250,000 or such lesser amount as is acceptable to Issuing Bank; (iii) immediately after giving effect to such issuance the Total Utilization of Revolving Commitments shall not exceed the lesser of (A) the Maximum Credit and (B) the Borrowing Base then in effect; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit then in effect; (v) in no event shall any standby Letter of Credit have an expiration date later than the earlier of (1) 10 Business Days prior to the Maturity Date and (2) the date which is one year from the date of issuance of such standby Letter of Credit; (vi) in no event shall any commercial Letter of Credit have an expiration date later than the earlier of (1) 10 Business Days prior to the Maturity Date and (2) the date which is 180 days from the date of issuance of such commercial Letter of Credit; (vii) in no event shall a commercial Letter of Credit be issued unless Issuing Bank has agreed in writing to issue commercial Letters of Credit pursuant to this Section 2.03 and such commercial Letter of Credit is otherwise acceptable to Issuing Bank, in each case in its sole discretion; (viii) in no event shall any Letter of Credit be issued if the issuance thereof would violate one or more provisions of any applicable law, rule, or regulation or one or more policies of Issuing Bank applicable to letters of credit; (ix) after giving effect to such issuance, in no event shall the Letter of Credit Usage for all Letters of Credit issued by any Issuing Bank exceed the Issuing Bank Sublimit for such Issuing Bank; and (x) each Letter of Credit shall be in form and substance reasonably satisfactory to Issuing Bank and issued in accordance with Issuing Bank's standard operating procedures. Subject to the foregoing, Issuing Bank may agree that a standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each, unless Issuing Bank elects not to extend for any such additional period; provided, Issuing Bank shall not extend any such Letter of Credit if it has received written notice from Administrative Agent, or any Lender that any condition set forth in Section 4.02 is not satisfied; provided further, if any Lender is a Defaulting Lender, Issuing Bank shall not be required to issue any Letter of Credit or extend the expiry date or increase the amount of any outstanding Letter of Credit unless Issuing Bank has entered into arrangements satisfactory to it and Borrower to eliminate Issuing Bank's risk with respect to the participation in Letters of Credit of the Defaulting Lender, including by Cash Collateralizing such Defaulting Lender's Pro Rata Share of the Letter of Credit Usage in an amount not less than the Minimum Collateral Amount.

(2) Notice of Issuance. Subject to Section 4.02, whenever the Borrower desires the issuance of a Letter of Credit, it shall deliver to Administrative Agent and a designated Issuing Bank an Issuance Notice no later than 12:00 p.m. (New York City time) at least three Business Days (in the case of standby Letters of Credit) or five Business Days (in the case of commercial Letters of Credit), or in each case such shorter period as may be agreed to by Issuing Bank in any particular instance, in advance of the proposed date of issuance. At the request of Issuing Bank, the Borrower shall also complete and submit to Issuing Bank the standard letter of credit application of Issuing Bank. Upon satisfaction or waiver of the conditions set forth in Section 4.02, Issuing Bank shall issue the requested Letter of Credit only in accordance with Issuing Bank's standard operating procedures. Upon the issuance of any Letter of Credit or amendment to a Letter of Credit, Issuing Bank shall promptly notify the Administrative Agent thereof and Administrative Agent shall notify each Lender with a Revolving Commitment of such issuance or amendment which notice shall be accompanied by a copy of such Letter of Credit or amendment.

(3) Responsibility of Issuing Bank With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, Issuing Bank shall be responsible only to examine the documents delivered under such Letter of Credit so as to ascertain whether they appear on their face to be substantially in accordance with the terms and conditions of such Letter of Credit. As between the Borrower and Issuing Bank, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by Issuing Bank or any proceeds thereof, by the respective beneficiaries, transferees and assignees of letter of credit proceeds of such Letters of Credit. In furtherance and not in limitation of the foregoing, Issuing Bank shall not be responsible to any Loan Party, any Agent, any Lender or any other party hereto for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance (or amendment) of any Letter of Credit, any drawing under any Letter of Credit or any consent to the amendment or cancellation of any Letter of Credit, even if such document should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer any Letter of Credit or assign the proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary, transferee or assignee of letter of credit proceeds of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; (viii) any consequences arising from causes beyond the control of Issuing Bank, including any Governmental Acts; or (ix) errors in translation. Nothing in the previous sentence shall affect or impair, or prevent the vesting of, any of Issuing Bank's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by Issuing Bank under or in connection with any Letter of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith (i.e., honesty in fact), shall not give rise to any liability on the part of Issuing Bank to any Loan Party, any Agent, any Lender or any other party hereto. Notwithstanding anything to the contrary contained in this Section 2.03(3), Borrower shall retain any and all rights it may have against Issuing Bank for any liability for direct damages (as opposed to punitive, exemplary, consequential or punitive damages) arising solely out of the gross negligence or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(4) Reimbursement by Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event Issuing Bank has determined to honor a drawing under a Letter of Credit, it shall promptly notify Borrower and Administrative Agent, and Borrower shall reimburse Issuing Bank on or before the Business Day immediately following the date on which such drawing is honored (the "Reimbursement Date") in an amount in Dollars and in same day funds equal to the amount of such honored drawing; provided, anything contained herein to the contrary notwithstanding, (i) unless Borrower shall have notified Administrative Agent and Issuing Bank prior to 10:00 a.m. (New York City time) on the date such drawing is honored that Borrower intends to reimburse Issuing Bank for the amount of such honored drawing with funds other than the proceeds of Revolving Loans, Borrower shall be deemed to have given a timely Funding Notice to Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to the amount of such honored drawing, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Lenders with Revolving Commitments shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such honored drawing, the proceeds of which shall be applied directly by Administrative Agent to reimburse Issuing Bank for the amount of such honored drawing; and provided further, if for any reason proceeds of Revolving Loans are not received by Issuing Bank on the Reimbursement Date in an amount equal to the amount of such honored drawing, Borrower shall reimburse Issuing Bank, on demand, in an amount in same day funds equal to the excess of the amount of such honored drawing over the aggregate amount of such Revolving Loans, if any, the proceeds of which are so received, together with interest calculated as per Section 2.08(6). Nothing in this Section 2.03(4) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.03(4).

(5) Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Lender having a Revolving Commitment shall be deemed to have purchased, and hereby agrees to irrevocably purchase, from Issuing Bank a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Lender's Pro Rata Share (with respect to the Revolving Commitments) of the maximum amount which is or at any time may become available to be drawn thereunder. In the event that Borrower shall fail for any reason to reimburse Issuing Bank as provided in Section 2.03(4), Issuing Bank shall promptly notify each Lender with a Revolving Commitment of the unreimbursed amount of such honored drawing and of such Lender's respective participation therein based on such Lender's Pro Rata Share of the Revolving Commitments. Each Lender with a Revolving Commitment shall make available to Issuing Bank an amount equal to its respective participation, in Dollars and in same day funds, at the office of Issuing Bank specified in such notice, not later than 12:00 p.m. (New York City time) on the first business day (under the laws of the jurisdiction in which such office of Issuing Bank is located) after the date on which it is so notified by Issuing Bank. In the event that any Lender with a Revolving Commitment fails to make available to Issuing Bank on such business day the amount of such Lender's participation in such Letter of Credit as provided in this Section 2.03(5), Issuing Bank shall be entitled to recover such amount on demand from such Lender together with interest thereon for the first three Business Days at the rate customarily used by Issuing Bank for the correction of errors among banks and thereafter at the Base Rate. Nothing in this Section 2.03(5) shall be deemed to prejudice the right of any Lender with a Revolving Commitment to recover from Issuing Bank any amounts made available by such Lender to Issuing Bank pursuant to this Section 2.03(5) in the event that it is determined by a final, non-appealable judgment of a court of competent jurisdiction that the payment with respect to a Letter of Credit in respect of which payment was made by such Lender constituted gross negligence or willful misconduct on the part of Issuing Bank. In the event Issuing Bank shall have been reimbursed by other Lenders pursuant to this Section 2.03(5) for all or any portion of any drawing honored by Issuing Bank under a Letter of Credit, such Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under this Section 2.03(5) with respect to such honored drawing such Lender's Pro Rata Share of all payments subsequently received by Issuing Bank from Borrower in reimbursement of such honored drawing when such payments are received. Any such distribution shall be made to a Lender at its primary address set forth below its name on Schedule 10.02 or at such other address as such Lender may request.

(6) Obligations Absolute. The obligation of Borrower to reimburse Issuing Bank for drawings honored under the Letters of Credit issued by it and to repay any Revolving Loans made by Lenders pursuant to Section 2.03(4) and the obligations of Lenders under Section 2.4(e) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Issuing Bank, Lender or any other Person or, in the case of a Lender, against Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) payment by Issuing Bank under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings or any of its Subsidiaries; (vi) any breach hereof or any other Loan Document by any party thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing; provided, in each case, that payment by Issuing Bank under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of Issuing Bank under the circumstances in question as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(7) Indemnification. Without duplication of any obligation of Borrower under Section 10.04 or 10.05, in addition to amounts payable as provided herein, Borrower hereby agrees to protect, indemnify, pay and save harmless Issuing Bank from and against any and all claims, demands, liabilities, damages and losses, and all reasonable and documented costs, charges and out-of-pocket expenses (including reasonable and documented fees, out-of-pocket expenses and disbursements of outside counsel (limited to one outside counsel per applicable jurisdiction and, in the case of a conflict of interest where the Person affected by such conflict informs Borrower of such conflict and thereafter retains its own counsel, of another outside counsel per applicable jurisdiction for such affected person)) which Issuing Bank may incur or be subject to as a consequence, direct or indirect, of (i) the issuance of any Letter of Credit by Issuing Bank, other than as a result of the gross negligence, bad faith or willful misconduct of Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction (including in connection with the wrongful dishonor by Issuing Bank of a proper demand for payment made under any Letter of Credit issued by it), or (ii) the failure of Issuing Bank to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(8) Cash Collateralization. If any Event of Default shall occur and be continuing, on the day that the Borrower receives notice from the Administrative Agent referred to in Section 8.02, the Borrower shall deposit in a deposit account in the name of the Administrative Agent, for the benefit of the Issuing Banks and the Lenders, Cash Collateral in an amount equal to 105% of the Letter of Credit Usage as of such date plus any 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 specified in Section 8.01(6). The Borrower also shall deposit Cash Collateral in accordance with this Section 2.03(8) as and to the extent required by Sections 2.05(3) and 2.16. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such deposit 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 Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Funds in such account shall, notwithstanding anything to the contrary in the Collateral Documents, be applied by the Administrative Agent to reimburse the Issuing Banks for honored drawings under Letters of Credit for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Letter of Credit Usage at such time or, if the maturity of the Loans has been accelerated (but subject to in the case of any such application at a time when any Lender is a Defaulting Lender (but only if, after giving effect thereto, the remaining Cash Collateral shall be less than the aggregate Fronting Exposure), the consent of each Issuing Bank), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide Cash Collateral as a result of the occurrence of an Event of Default, such Cash Collateral (to the extent not applied as aforesaid) shall be returned to the Borrower promptly after all Events of Default have been cured or waived and the Administrative Agent shall have received a certificate from an Responsible Officer of the Borrower to that effect. If the Borrower is required to provide Cash Collateral pursuant to Section 2.05(3), such Cash Collateral (to the extent not applied as aforesaid) shall be returned to the Borrower to the extent that, after giving effect to such return, the Total Utilization of Revolving Commitments would not exceed the lesser of (i) the Maximum Credit and (ii) the Borrowing Base then in effect and no Default or Event of Default shall have occurred and be continuing. If the Borrower is required to provide Cash Collateral pursuant to Section 2.16, such Cash Collateral (to the extent not applied as aforesaid) shall be returned to the Borrower to the extent that, after giving effect to such return, no Issuing Bank shall have any Fronting Exposure and no Default or Event of Default shall have occurred and be continuing.

(9) Resignation and Removal of Issuing Bank. An Issuing Bank may resign as Issuing Bank upon 60 days prior written notice to Administrative Agent, Lenders and Borrower. An Issuing Bank may be replaced at any time by written agreement among Borrower, Administrative Agent, the replaced Issuing Bank (provided that the replaced Issuing Bank shall not be required to execute or deliver any written agreement if the replaced Issuing Bank has no Letters of Credit or reimbursement obligations with respect thereto outstanding; provided, further, that Borrower shall promptly notify Issuing Bank upon the execution and delivery of any such written agreement by the parties thereto) and the successor Issuing Bank. Administrative Agent shall notify the Lenders of any such replacement of such Issuing Bank. At the time any such replacement or resignation shall become effective, Borrower shall (A) pay all unpaid fees and other amounts accrued for the account of the replaced Issuing Bank and (B) Cash Collateralize or replace any existing Letters of Credit or cause a bank or other financial institution acceptable to the replaced Issuing Bank to issue backstop letters of credit (naming the replaced Issuing Bank as the beneficiary thereof and otherwise in form and substance satisfactory to the replaced Issuing Bank) in respect of existing Letters of Credit, in each case on terms satisfactory to the replaced Issuing Bank. From and after the effective date of any such replacement or resignation, (i) any successor Issuing Bank shall have all the rights and obligations of an 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 or resignation of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto to the extent that Letters of Credit issued by it remain outstanding 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 or resignation, but shall not be required to issue additional Letters of Credit.

SECTION 2.04 Pro Rata Shares; Availability of Funds.

(1) Pro Rata Shares. All Loans shall be made, and all participations in Letters of Credit, Swing Line Loans and Protective Advances shall be purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby. Any request for a Letter of Credit shall be issued by the Issuing Bank designated by the Borrower subject to its Issuing Bank Sublimit and the conditions set forth in Sections 2.03 and 4.02, it being understood that no Issuing Bank shall be responsible for any default by any other Issuing Bank in its obligation to issue a Letter of Credit requested hereunder.

(2) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the Overnight Rate for three Business Days and thereafter at the Base Rate. In the event that (i) Administrative Agent declines to make a requested amount available to Borrower until such time as all applicable Lenders have made payment to Administrative Agent, (ii) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement and (iii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to Borrower on the Credit Date, at Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by Borrower through and including the time of Borrower's receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans for such Class of Loans. Nothing in this Section 2.04(2) shall be deemed to relieve any Lender from its obligation to fulfill its Revolving Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

SECTION 2.05 Prepayments.

(1) Optional Prepayments.

(i) Any time and from time to time:

(a) with respect to Base Rate Loans (other than any Swing Line Loan or Protective Advance), Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount;

(b) with respect to Eurodollar Rate Loans, Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $500,000 and integral multiples of $100,000 in excess of that amount; and

(c) with respect to Swing Line Loans or Protective Advances, Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of $500,000, and in integral multiples of $100,000 in excess of that amount.

(ii) All such prepayments shall be made:

(a) upon not less than one Business Day's prior written or telephonic notice in the case of Base Rate Loans;

(b) upon not less than three Business Days' prior written or telephonic notice in the case of Eurodollar Rate Loans; and

(c) upon written or telephonic notice on the date of prepayment, in the case of Swing Line Loans or Protective Advances;

in each case given to Administrative Agent or Swing Line Lender, as the case may be, by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed by delivery of written notice thereof to Administrative Agent (and Administrative Agent will promptly transmit such original notice for Revolving Loans to each Lender) or Swing Line Lender, as the case may be. Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.13.

(2) Optional Commitment Reductions.

(i) Borrower may, upon not less than three Business Days' prior written or telephonic notice promptly confirmed by delivery of written notice thereof to Administrative Agent (which original written notice Administrative Agent will promptly transmit to each applicable Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments in an amount up to the amount by which the Maximum Credit exceeds the Total Utilization of Revolving Commitments at the time of such proposed termination or reduction; provided, any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of $5,000,000 and integral multiples of $1,000,000 in excess of that amount.

(ii) Borrower's notice to Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Commitments shall be effective on the date specified in Borrower's notice and shall reduce the Revolving Commitment of each Lender proportionately to its Pro Rata Share thereof.

(3) Mandatory.

(a) Reductions of Revolving Exposure. In the event and on each occasion that the Total Utilization of Revolving Commitments at such time exceeds the lesser of (A) the Maximum Credit and (B) the Borrowing Base then in effect, the Borrower shall, subject to Section 2.10, prepay Swing Line Loans and Revolving Loans (or, if no such Loans or Borrowings are outstanding, deposit Cash Collateral in accordance with Section 2.03(8)) in an aggregate amount equal to such excess.

(b) Cash Dominion Period. Upon the commencement and during the continuance of a Cash Dominion Period, (i) the Administrative Agent shall instruct each depositary bank of any Loan Party that is party to a Control Agreement to transfer on each Business Day (or with such other frequency as shall be specified by the Administrative Agent) to an Administrative Agent Account all funds then on deposit in the deposit accounts subject to such Control Agreement; and (ii) on each Business Day immediately following the day of receipt by the Administrative Agent of any funds pursuant to a transfer referred to in clause (i) above or pursuant to a prepayment pursuant to clause (a) above, the Administrative Agent shall apply all funds so received *first*, to prepay any outstanding Protective Advances and Overadvances; *second*, to prepay any outstanding Swing Line Loans; *third*, to prepay any outstanding Revolving Loans (without a corresponding reduction in Revolving Commitments); *fourth*, to Cash Collateralize any outstanding Letter of Credit Usage in accordance with Section 2.03(8) and, following such application thereof, shall remit the remaining funds so received, if any, to the Borrower; provided that upon the occurrence and during the continuance of an Event of Default, all funds so received shall be applied in accordance with Section 8.03 (and, pending such application, may be held as Cash Collateral). The Loan Parties hereby direct the Administrative Agent to apply the funds as so specified and authorize the Administrative Agent to determine the order of application of such funds as among the individual Loans and items of Letter of Credit Usage. For the avoidance of doubt, funds used to reduce outstanding amounts may be reborrowed, subject to satisfaction of the conditions set forth in Section 4.02 and the other terms hereof.

(c) Notice and Certificate. Prior to or concurrently with any mandatory prepayment pursuant to Section 2.05(3)(a), the Borrower (i) shall notify the Administrative Agent (and, in the case of a prepayment of a Swing Line Loan, the Swing Line Lender) of such prepayment and (ii) shall deliver to the Administrative Agent a certificate of an Responsible Officer of the Borrower setting forth the calculation of the amount of the applicable prepayment or reduction. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid and may be given by telephone or in writing (and, if given by telephone, shall promptly be confirmed in writing). Promptly following receipt of any such notice (other than a notice relating solely to the Swing Line Loans), the Administrative Agent shall advise the Lenders of the details thereof. Each mandatory prepayment of any Loan shall be allocated among the Lenders holding Loans comprising such Loan in accordance with their Pro Rata Shares.

(d) All prepayments under this Section 2.05 shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Eurodollar Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Rate Loan pursuant to Section 3.04.

SECTION 2.06 Conversion/Continuation.

(1) Subject to Article III hereof, and so long as no Default or Event of Default shall have occurred and then be continuing, Borrower shall have the option:

(i) to convert at any time all or any part of any Revolving Loan equal to $2,000,000 and integral multiples of $500,000 in excess of that amount from one Type of Loan to another Type of Loan; provided, a Eurodollar Rate Loan may only be converted on the expiration of the Interest Period applicable to such Eurodollar Rate Loan unless Borrower shall pay all amounts due under Section 3.04 in connection with any such conversion; or

(ii) upon the expiration of any Interest Period applicable to any Eurodollar Rate Loan, to continue all or any portion of such Loan equal to $2,000,000 and integral multiples of $500,000 in excess of that amount as a Eurodollar Rate Loan.

In the event any Loan shall have been converted or continued in accordance with this Section 2.06 in part, such conversion or continuation shall be allocated ratably, in accordance with their Pro Rata Shares, among the Lenders holding the Loans comprising such Loan, and the Loans comprising each part of such Loan resulting from such conversion or continuation shall be considered a separate Loan. This Section 2.06 shall not apply to Swing Line Loans or Protective Advances, which may not be converted or continued.

(2) Borrower shall deliver a Conversion/Continuation Notice to Administrative Agent no later than 10:00 a.m. (New York City time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). Except as otherwise provided herein, a Conversion/Continuation Notice for conversion to, or continuation of, any Eurodollar Rate Loans shall be irrevocable on and after the related Interest Rate Determination Date, and Borrower shall be bound to effect a conversion or continuation in accordance therewith. If on any day a Loan is outstanding with respect to which a Funding Notice or Conversion/Continuation Notice has not been delivered to Administrative Agent in accordance with the terms hereof specifying the applicable basis for determining the rate of interest, then for that day such Loan shall be a Base Rate Loan.

SECTION 2.07 Repayment of Loans. The Borrower shall repay (a) to the Administrative Agent, for the account of the Lenders, the then unpaid principal amount of each Revolving Loan on the Maturity Date; (b) to the Swing Line Lender the then unpaid principal amount of each Swing Line Loan on the earlier of (i) the Maturity Date and (ii) demand for payment thereof made to the Borrower by the Swing Line Lender; and (c) to the Administrative Agent the then unpaid principal amount of each Protective Advance on the earlier of (i) the Maturity Date and (ii) demand for payment thereof made to the Borrower by the Administrative Agent; provided that on each date that a Revolving Loan is made, the Borrower shall repay all Protective Advances that were outstanding on the date such Revolving Loan was requested.

SECTION 2.08 Interest.

(1) Except as otherwise set forth herein, each Class of Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) in the case of Revolving Loans:

(a) if a Base Rate Loan (including each Swing Line Loan and each Protective Advance), at the Base Rate plus the Applicable Margin; or

(b) if a Eurodollar Rate Loan, at the Eurodollar Rate plus the Applicable Margin; and

(ii) in the case of Swing Line Loans and any Protective Advances, at the Base Rate plus the Applicable Margin.

(2) The basis for determining the rate of interest with respect to any Loan (except a Swing Line Loan and any Protective Advances which can be made and maintained as Base Rate Loans only), and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by Borrower and notified to Administrative Agent and Lenders pursuant to the applicable Funding Notice or Conversion/Continuation Notice, as the case may be.

(3) In connection with Eurodollar Rate Loans there shall be no more than five Interest Periods outstanding at any time. In the event Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, such Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Funding Notice or Conversion/Continuation Notice, Borrower shall be deemed to have selected an Interest Period of one month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof to Borrower and each Lender.

(4) Interest payable pursuant to Section 2.08(1) shall be computed (i) in the case of Base Rate Loans on the basis of a 360-day year (or, in the case of Base Rate Loans determined by reference to the "Prime Rate," a 365-day or 366-day year, as applicable), as the case may be, and (ii) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(5) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; provided, however, with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date; (iii) in the case of any Protective Advance or any interest accrued in accordance with Section 2.10, on demand; and (iv) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans.

(6) Borrower agrees to pay to Issuing Bank, with respect to drawings honored under any Letter of Credit, interest on the amount paid by Issuing Bank in respect of each such honored drawing from the date such drawing is honored to but excluding the date such amount is reimbursed by or on behalf of Borrower at a rate equal to (i) for the period from the date such drawing is honored to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2.00% *per annum* in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(7) Interest payable pursuant to Section 2.08(6) shall be computed on the basis of a 365/366-day year for the actual number of days elapsed in the period during which it accrues, and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by Issuing Bank of any payment of interest pursuant to Section 2.08(6), Issuing Bank shall distribute to each Lender, out of the interest received by Issuing Bank in respect of the period from the date such drawing is honored to but excluding the date on which Issuing Bank is reimbursed for the amount of such drawing (including any such reimbursement out of the proceeds of any Revolving Loans), the amount that such Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period if no drawing had been honored under such Letter of Credit. In the event Issuing Bank shall have been reimbursed by Lenders for all or any portion of such honored drawing, Issuing Bank shall distribute to each Lender which has paid all amounts payable by it under Section 2.03(5) with respect to such honored drawing such Lender's Pro Rata Share of any interest received by Issuing Bank in respect of that portion of such honored drawing so reimbursed by Lenders for the period from the date on which Issuing Bank was so reimbursed by Lenders to but excluding the date on which such portion of such honored drawing is reimbursed by Borrower.

(8) Default Interest. Upon the occurrence and during the continuance of a Specified Event of Default, the principal amount of all past due Loans outstanding and, to the extent permitted by applicable law, any interest payments on the past due Loans or any fees or other past due amounts owed in respect of the Obligations, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 2.00% *per annum* in excess of the interest rate otherwise payable hereunder with respect to the applicable past due Loans (or, in the case of any such fees and other past due amounts, at a rate which is 2% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans that are Revolving Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.08(8) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent, Issuing Bank, Swing Line Lender or any Lender.

(9) 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.

(1) Borrower agrees to pay to Lenders having Revolving Exposure:

(i) commitment fees equal to such Lender's Pro Rata Share of (A) the excess, determined as of the close of business on such day, of (1) the Maximum Credit over (2) the aggregate principal amount of all outstanding Revolving Loans and the Letter of Credit Usage, multiplied by (B) the Applicable Commitment Fee Rate on such day; and

(ii) letter of credit fees equal to (1) the Applicable Margin for Revolving Loans that are Eurodollar Rate Loans, multiplied by (2) the average aggregate daily maximum amount available to be drawn under all such Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination).

All fees referred to in this Section 2.09(1) shall be paid to Administrative Agent at its Principal Office and upon receipt, Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof.

(2) Borrower agrees to pay directly to Issuing Bank, for its own account, the following fees:

(i) a fronting fee equal to 0.125%, *per annum*, times the average aggregate daily maximum amount available to be drawn under all Letters of Credit (determined as of the close of business on any date of determination); and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(3) All fees referred to in Section 2.09(1) shall be calculated on the basis of a 360-day year and the actual number of days elapsed and shall be payable quarterly in arrears on the last Business Day of each March, June, September and December of each year during the Revolving Commitment Period, commencing on the first such date to occur after the Closing Date, and on the Maturity Date.

(4) Borrower agrees to pay to the Administrative Agent, for its own account, fees in the amounts and at the times specified in the Engagement Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(5) In addition to any of the foregoing fees, Borrower agrees to pay to Agents such other fees in the amounts and at the times separately agreed upon.

SECTION 2.10 Protective Advances and Overadvances.

(1) General. Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrower and the Lenders, from time to time during the Revolving Commitment Period, in the Administrative Agent's sole discretion (but without any obligation to) (i) after the occurrence of a Default or an Event of Default or (ii) at any time that any of the other conditions precedent set forth in Section 4.02 would not be satisfied, to make loans to the Borrower in Dollars on behalf of the Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations or (C) to pay any other amount chargeable to or required to be paid by the Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees and expenses as described in Section 10.04) and other sums payable under the Loan Documents (any such loans are herein referred to as "**Protective Advances**"); provided that no Protective Advance shall be made if immediately after giving effect thereto (x) the aggregate principal amount of the outstanding Protective Advances, together with any outstanding Overadvances, would exceed an amount equal to 10% of the Borrowing Base in effect at the time of the making of such Protective Advance or (y) the Total Utilization of Revolving Commitments would exceed the Maximum Credit. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall constitute Obligations for all purposes hereof and the other Loan Documents and shall be Guaranteed and secured as provided in the Loan Documents. All Protective Advances shall be Base Rate Loans. 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. The Administrative Agent may at any time (i) request, on behalf of the Borrower, the Lenders to make, subject to satisfaction of the conditions precedent set forth in Section 4.02, Base Rate Revolving Loans to repay any Protective Advance or (ii) require the Lenders to acquire participations in any Protective Advance as provided in Section 2.10(2). The Administrative Agent shall endeavor to notify the Borrower promptly after the making of any Protective Advance.

(2) Lenders' Participations in Protective Advances. The Administrative Agent may by written notice given to each Lender not later than 1:00 p.m. (New York City time) on any Business Day require the Lenders to purchase, in accordance with their Pro Rata Shares, participations in all or a portion of the Protective Advances outstanding, together with accrued interest thereon. Such notice shall specify the aggregate amount of the Protective Advance or Protective Advances in which Lenders will be required to participate and such Lender's Pro Rata Share of such Protective Advance or Protective Advances and the accrued interest thereon. Each Lender shall make available an amount equal to such Lender's Pro Rata Share of such Protective Advance or Protective Advances, and the accrued interest thereon, not later than 12:00 p.m. (New York City time) on the first Business Day following the date of receipt of such notice, by wire transfer of same day funds in Dollars to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. In the event that any Lender fails to make available for the account of the Administrative Agent any payment referred to in the preceding sentence, the Administrative Agent shall be entitled to recover such amount on demand from such Lender, together with interest thereon for three Business Days at the rate customarily used by the Administrative Agent for the correction of errors among banks and thereafter at the Base Rate. In order to evidence the purchase of participations under this Section 2.10(2), each Lender agrees to enter at the request of the Administrative Agent into a participation agreement in form and substance reasonably satisfactory to the Administrative Agent. In the event the Lenders shall have purchased participations in any Protective Advance pursuant to this Section 2.10(2), the Administrative Agent shall promptly distribute to each Lender that has paid all amounts payable by it under this Section 2.10(2) with respect to such Protective Advance such Lender's Pro Rata Share of all payments subsequently received by the Administrative Agent from or on behalf of the Borrower in respect of such Protective Advance; provided that any such payment so distributed shall be repaid to the Administrative Agent if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Protective Advance pursuant to this Section 2.10(2) shall not constitute a Loan and shall not relieve the Borrower of its obligation to repay such Protective Advance.

(3) Obligations Absolute. The obligations of the Lenders under Section 2.10(2) shall be unconditional and irrevocable and shall be paid and performed strictly in accordance with the terms hereof under all circumstances, notwithstanding (i) the existence of any claim, set off, defense or other right that the Borrower or any Lender may have at any time against the Administrative Agent or any other Person or, in the case of any Lender, against the Borrower, whether in connection herewith, with the transactions contemplated herein or with any unrelated transaction, (ii) any adverse change in the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower or any Subsidiary, (iii) any breach hereof or of any other Loan Document by any party thereto, (iv) any Default or Event of Default and (v) any other event or condition whatsoever, whether or not similar to any of the foregoing.

(4) Overadvances. If at any time the outstanding Revolving Loans cause the Total Utilization of Revolving Commitments to exceed the Borrowing Base then in effect (an "Overadvance"), the excess amount shall, subject to this Section 2.10, be immediately due and payable by the Borrower on demand by the Administrative Agent. The Administrative Agent in its sole discretion may require the Lenders to honor requests for Overadvances and to forbear from requiring the Borrower to cure an Overadvance, (i) when an Event of Default is continuing as long as (A) the Overadvance does not continue for more than thirty (30) consecutive days and after an Overadvance has been repaid, no additional Overadvance shall exist until thirty (30) days after such repayment, (B) the Overadvance, together with any outstanding Protective Advances, would not exceed an amount equal to 10% of the Borrowing Base in effect at the time of the making of such Overadvance and (C) the Total Utilization of Revolving Commitments would not exceed the Maximum Credit. In no event shall Overadvances be required that would cause the Total Utilization of Revolving Commitments to exceed the Maximum Credit. The Administrative Agent's authorization to require the Lenders to honor requests for Overadvances and to forbear from requiring the Borrowers to cure an Overadvance may be revoked at any time by the Required Lenders by written notice to the Administrative Agent. All Overadvances shall constitute Obligations secured by the Collateral and shall be entitled to all benefits of the Loan Documents. No Overadvance shall result in an Event of Default due to a Borrower's failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. The Administrative Agent agrees to use its commercially reasonable best efforts to promptly notify the Lenders of the issuance of an Overadvance Loan; provided, that the Administrative Agent shall have no liability for any failure to provide any such notice.

SECTION 2.11 Evidence of Indebtedness.

(1) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Subject to Section 2.12, any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or Borrower's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

SECTION 2.12 Register. Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The Register shall be available for inspection by Borrower or any Lender (with respect to (i) any entry relating to such Lender's Loans and (ii) the identity of the other Lenders, but not any information with respect to such other Lenders' Loans) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Revolving Commitments and the Loans in accordance with the provisions of Section 10.07, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect any Lender's Revolving Commitments or Borrower's Obligations in respect of any Loan. The Borrower hereby designates Administrative Agent to serve as Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.12, and Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(2) Notes. If so requested by any Lender by written notice to Borrower (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.07) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Revolving Loan or Swing Line Loan, as the case may be.

SECTION 2.13 Payments Generally.

(1) Subject to Section 3.01, all payments to be made by the Borrower hereunder shall be made in Dollars 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, at the applicable Administrative Agent's Principal Office for payment and in Same Day Funds not later than 12:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate 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 Lending Office. Any payments under this Agreement that are made later than 12:00 p.m., New York time, shall be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) Borrower hereby authorizes Administrative Agent to charge any of the Borrower's accounts with Administrative Agent in order to cause timely payment to be made to Administrative Agent of all principal, interest, fees and expenses due hereunder or under any other Loan Document (subject to sufficient funds being available in its accounts for that purpose).

(3) Except as otherwise expressly 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.

(4) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 11:00 a.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender hereunder or, in the case of the Lenders, for the account of the Borrower 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:

(a) 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 Overnight Rate from time to time in effect; and

(b) 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 Overnight 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, or cause such amount to be paid, 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 2.13 shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Section 4.02 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.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan or fund any participation 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 or purchase its participation.

(e) 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.

(f) 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 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the 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, 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 then owing to such Lender.

SECTION 2.14 Sharing of Payments. Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as Cash Collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and amounts payable in respect of participations in Swing Line Loans, Protective Advances or Letters of Credit, fees and other amounts then due and owing to such Lender hereunder or under the other Loan Documents (collectively, the "**Aggregate Amounts Due**" to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.14 shall not be construed to apply to (a) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it.

SECTION 2.15 Incremental Facilities. Borrower may by written notice to Administrative Agent elect to request, prior to the Revolving Commitment Termination Date, an increase to the existing Revolving Commitments in an aggregate amount not to exceed $125,000,000 during the term of this Agreement (any such increase, the "**New Revolving Loan Commitments**"). Each such notice shall specify (A) the date (each, an "**Increased Amount Date**") on which Borrower proposes that the New Revolving Loan Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to Administrative Agent or such shorter period of time as consented to by Administrative Agent (B) the amount of the New Revolving Loan Commitments (which amount shall be at least $5,000,000) and (C) the identity of each Lender or other Person that is an Eligible Assignee (each, a "**New Revolving Loan Lender**") to whom Borrower proposes any portion of such New Revolving Loan Commitments be allocated and the amounts of such allocations; provided that Administrative Agent may elect or decline to arrange such New Revolving Loan Commitments in its sole discretion and any Lender approached to provide all or a portion of the New Revolving Loan Commitments may elect or decline, in its sole discretion, to provide a New Revolving Loan Commitment; provided, further, that, if the consent of the Administrative Agent, each Issuing Bank and each Swing Line Lender would be required pursuant to the terms of Section 10.07, each Lender and other Person that the Borrower proposes to become a New Revolving Loan Lender must be reasonably acceptable to Administrative Agent, each Issuing Bank and each Swing Line Lender (the consent of each of the Administrative Agent, each Issuing Bank and each Swing Line Lender not to be unreasonably withheld, conditioned or delayed). Such New Revolving Loan Commitments shall become effective, as of such Increased Amount Date; provided that (1) no Specified Event of Default shall exist at the time of, or result after giving effect to, such Increased Amount Date by giving effect to such New Revolving Loan Commitments; (2) the New Revolving Loan Commitments shall be effected pursuant to one or more Joinder Agreements executed and delivered by Borrower, the New Revolving Loan Lender, and Administrative Agent, and each of which shall be recorded in the Register and each New Revolving Loan Lender shall be subject to the requirements set forth in Section 3.01(3); (3) Borrower shall make any payments required pursuant to Section 3.04 in connection with the New Revolving Loan Commitments; and (4) Borrower shall deliver or cause to be delivered any legal opinions, mortgage amendments (including updated and increased title insurance amount), notes or other documents reasonably requested by Administrative Agent in connection with any such transaction.

On any Increased Amount Date on which New Revolving Loan Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (a) each of the Revolving Loan Lenders shall assign to each of the New Revolving Loan Lenders, and each of the New Revolving Loan Lenders shall purchase from each of the Revolving Loan Lenders, at the principal amount thereof (together with accrued interest), such interests in the Revolving Loans outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Revolving Loan Lenders and New Revolving Loan Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such New Revolving Loan Commitments to the Revolving Commitments, (b) each New Revolving Loan Commitment shall be deemed for all purposes a Revolving Commitment and each Loan made thereunder (a "**New Revolving Loan**") shall be deemed, for all purposes, a Revolving Loan and (c) each New Revolving Loan Lender shall become a Lender with respect to the New Revolving Loan Commitment and all matters relating thereto.

Administrative Agent shall notify Lenders promptly upon receipt of Borrower's notice of each Increased Amount Date and in respect thereof (y) the New Revolving Loan Commitments and the New Revolving Loan Lenders, and (z) in the case of each notice to any Revolving Loan Lender, the respective interests in such Revolving Loan Lender's Revolving Loans, in each case subject to the assignments contemplated by this Section 2.15.

The terms and provisions of the New Revolving Loans shall be identical to the Revolving Loans; provided that if the Borrower determines to increase the Applicable Margin or fees payable in respect of the New Revolving Loan Commitments, such increase shall be permitted if the Applicable Margin or fees payable in respect of all Revolving Commitments and Revolving Loans shall be increased to equal such Applicable Margin or fees payable in respect of the New Revolving Loan Commitments; provided further that the Borrower at its election may pay arrangement, upfront or closing fees with respect to any New Revolving Loan Commitments without paying such fees with respect to the existing Revolving Commitments.

New Revolving Loan Commitments shall become Commitments under this Agreement pursuant to an amendment to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each New Revolving Loan Lender providing such New Revolving Loan Commitments and the Administrative Agent. Such amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15. In connection with any such amendment, Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such New Revolving Loan Commitments are provided with the benefit of the applicable Loan Documents.

SECTION 2.16 Defaulting Lenders.

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

(a) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.10 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent (including, for the avoidance of doubt, amounts owing in respect of any Protective Advance) hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to Issuing Bank or Swing Line Lender hereunder; *third*, to Cash Collateralize Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16(2)(b); *fourth*, as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a Deposit Account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.16(2)(b); *sixth*, to the payment of any amounts owing to the Lenders, Issuing Bank or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, Issuing Bank or Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its Pro Rata Share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, or such Loans are Protective Advances, such payment shall be applied solely to pay the Loans of, and reimbursement obligations with respect to Letters of Credit, Swing Line Loans and Protective Advances owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or reimbursement or participation obligations with respect to Letters of Credit, Swing Line Loans and Protective Advances owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans are held by the Lenders pro rata in accordance with the applicable Commitments without giving effect to Section 2.16(1)(b)(iii). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(1)(a) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.09 for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender); provided such Defaulting Lender shall be entitled to receive fees pursuant to Section 2.09 for any period during which that Lender is a Defaulting Lender only to extent allocable to its Pro Rata Share of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16(2)(b).

(ii) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (i) above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit, Swing Line Loans or Protective Advances that has been reallocated to such Non-Defaulting Lender pursuant to clause (iii) below, (y) pay to Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iii) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) in the case of any Protective Advance, such Protective Advance is made in compliance with Section 2.10(1), (y) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless Borrower shall have otherwise notified Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (z) such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 10.25, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iv) Repayment of Swing Line Loans and Protective Advances; Cash Collateral. If the reallocation described in Section 2.16(1)(b)(iii) cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (A) first, prepay Protective Advances in an amount equal to the Administrative Agent's Fronting Exposure in respect of Protective Advances, (B) second, prepay Swing Line Loans in an amount equal to the Swing Line Lender's Fronting Exposure and (C) Cash Collateralize the Issuing Banks' Fronting Exposures in accordance with Section 2.16(2)(b).

(2) Defaulting Lender Cure. If Borrower, Administrative Agent and each Swing Line Lender and Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to Section 2.16(1)(b)(iii)), and if Cash Collateral has been posted with respect to such Defaulting Lender, the Administrative Agent will promptly return or release such Cash Collateral to Borrower, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(a) New Swing Line Loans/Protective Advances/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Line Loans unless it is satisfied that the participations therein will be fully allocated among Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and the Defaulting Lender shall not participate therein, (ii) no Issuing Bank shall be required to issue, extend or increase any Letter of Credit unless it is satisfied that the participations in any existing Letters of Credit as well as the new, extended or increased Letter of Credit has been or will be fully allocated among the Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and such Defaulting Lender shall not participate therein except to the extent such Defaulting Lender's participation has been or will be fully Cash Collateralized in accordance with Section 2.16(2)(b), and (iii) each Protective Advance will be fully allocated among Non-Defaulting Lenders in a manner consistent with clause (a)(iii) above and the Defaulting Lender shall not participate therein.

(b) Cash Collateral. At any time that there shall exist a Defaulting Lender, promptly following the written request of Administrative Agent or Issuing Bank (with a copy to Administrative Agent) Borrower shall Cash Collateralize Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.16(1)(b)(iii) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) Grant of Security Interest. Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to Administrative Agent, for the benefit of Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (ii) below. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and Issuing Bank as herein provided (other than any Permitted Liens), or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

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

(iii) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 2.16 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (ii) the determination by Administrative Agent and Issuing Bank that there exists excess Cash Collateral; provided that, (x) subject to the other provisions of this Section 2.16, the Person providing Cash Collateral and Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations, and (y) Cash Collateral shall not be released during the continuance of a Default or Event of Default; provided further that to the extent that such Cash Collateral was provided by Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

(c) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall cease to be a Lender Counterparty with respect to any Hedge Agreement entered into while such Lender was a Defaulting Lender.

SECTION 2.17 Reserves.(a) Notwithstanding anything in this Agreement to the contrary, the Administrative Agent may at any time and from time to time in the exercise of its Permitted Discretion establish and increase or decrease any Reserves (such change in Reserves, a "Change") (including Reserves with respect to Hedging Agreements and Designated Cash Management Services Agreements); provided that (i) the Administrative Agent shall have provided the Borrower at least three Business Days' prior written notice of any such establishment or material increase of any Reserves (which notice shall include a reasonably detailed description of such Reserve being established or increased); provided that no such prior notice shall be required for changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized; and (ii) the circumstances, conditions, events or contingencies existing or arising prior to the Closing Date and disclosed or known to the Administrative Agent shall not be the basis for any establishment or modification of any Reserves after the Closing Date, unless (x) such Reserves relate to Taxes or (y) such circumstances, conditions, events or contingencies shall have changed in any material adverse respect since the Closing Date; provided, further, that the Administrative Agent may not implement reserves with respect to matters which are already specifically reflected in the eligibility standards for Eligible Accounts and Eligible Inventory.

(b) The amount of the Reserve established by the Administrative Agent shall have a reasonable relationship to the event, condition or other matter that is the basis for the Reserve and shall be based upon its consideration as to any factor, event, condition or other circumstance which the Administrative Agent reasonably determines: (i) will or could reasonably be expected to adversely affect the quantity, quality, mix or value of any ABL Priority Collateral, the enforceability or priority of the Collateral Agent's Liens thereon or the amount which the Secured Parties would be likely to receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation thereof, (ii) will or could reasonably be expected to result in a Default or an Event of Default or (iii) could arise as a result of any collateral report or financial information delivered to the Administrative Agent by the Borrower or any Person on behalf of thereof being incomplete, inaccurate or misleading in any material respect. In exercising such judgment, the Administrative Agent may consider, without duplication, factors already included in or tested by the definition of Eligible Accounts and Eligible Inventory, and any other criteria including: (A) changes after the Closing Date in any concentration of risk with respect to Eligible Accounts or Eligible Inventory from the concentration of risk set forth in the field examinations and collateral audits conducted prior to the Closing Date and (B) any other factors arising after the Closing Date that affect or that could reasonably be expected to affect the credit risk of lending to the Borrower on the security of the ABL Priority Collateral.

(c) Upon the notification of any Change, the Administrative Agent shall be available to discuss such Change, and the Borrower and its Restricted Subsidiaries may take such action as may be required so that the event, condition, circumstance or new fact that is the basis for such Change no longer exists. In no event shall such notice and opportunity limit the right of the Administrative Agent to make a Change, unless the Administrative Agent shall have determined in its Permitted Discretion that the event, condition, other circumstance or new fact that is the basis for such Change no longer exists or has otherwise been adequately addressed by the Borrower or its Restricted Subsidiaries.

(d) Notwithstanding anything herein to the contrary, Reserves shall not duplicate eligibility criteria contained in the definition of "Eligible Accounts" or "Eligible Inventory" and vice versa, or reserves or criteria deducted in computing the cost or fair market value or book value of any Eligible Accounts or any Eligible Inventory and vice versa.

Article III

Taxes, Increased Costs Protection and Illegality

SECTION 3.01 Taxes.

(1) Defined Terms. For purposes of this Section 3.01, the term "applicable Law" includes FATCA.

(2) Except as required by applicable Law, all payments by or on account of any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made without deduction or withholding for any Taxes.

(3) If any Loan Party or any other applicable withholding agent is required (as determined in the good faith discretion of an applicable withholding agent) by applicable Law to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on account of any Loan Party to or for the account of any Lender or Agent under any of the Loan Documents:

(a) the applicable Loan Party shall use commercially reasonable efforts to notify the Administrative Agent of any such requirement or any change in any such requirement as soon as practicable after such Loan Party becomes aware of it; *provided* that any failure to provide such notification shall not affect the applicable payee's indemnification rights hereunder;

(b) the applicable Loan Party or other applicable withholding agent shall make such deduction or withholding and pay to the relevant Governmental Authority any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for such Loan Party's account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), such Lender (or, in the case of any payment made to the Administrative Agent for its own account, the Administrative Agent) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after the due date of payment of any Tax which it is required by clause (b) above to pay (or as soon as reasonably practicable thereafter), the applicable Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(4) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with such properly completed and executed documentation as is prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document, in each case as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (4)(a), (b)(i) through (iv) and (c) of this Section) 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 such Lender shall, whenever any such documentation (including any specific documentation required below in this Section 3.01(4)) it previously delivered becomes obsolete, expired or inaccurate in any respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent in writing of its legal ineligibility to do so.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower and the Administrative Agent) two properly completed and duly executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

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

(i) in the case of a Foreign Lender claiming eligibility for the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, properly completed and duly executed copies of IRS Form W-8BEN (or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, properly completed and duly executed copies of IRS Form W-8BEN-E (or any successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty, and, in each case, such other documentation as required under the Code,

(ii) properly completed and duly executed copies of IRS Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) properly completed and duly executed certificates substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) or Section 881(c)(3)(B) of the Code, as applicable, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and, as applicable, that the portfolio interest is not contingent interest within the meaning of Section 871(h)(4) of the Code (any such certificate, a "**United States Tax Compliance Certificate**") and (B) properly completed and duly executed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where such Foreign Lender is a partnership or a participating Lender), properly completed and duly executed copies of IRS Form W-8IMY (or any successor forms) of such Foreign Lender, accompanied by an IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, United States Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9 and any other required information or certification documents (or any successor forms) from each beneficial owner, as applicable (*provided* that, if a Lender is a partnership (and not a participating Lender) and if one or more beneficial owners are claiming the portfolio interest exemption, a United States Tax Compliance Certificate substantially in the form of Exhibit H-4 may be provided by such Foreign Lender on behalf of each such beneficial owner), or

(v) properly completed and duly executed copies of any other documentation prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents, 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.

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

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender's regarded owner and, as applicable, such Lender.

Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(4).

(5) Without duplication of other amounts payable by the Borrower pursuant to Section 3.01(3), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(6) The Loan Parties shall, jointly and severally, indemnify a Lender or the Administrative Agent (each a "**Tax Indemnitee**"), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee on or attributable to any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01) (other than any penalties determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Tax Indemnitee), whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority (the Taxes described in this paragraph (6), the "**Indemnified Taxes**"); *provided* that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Tax Indemnitee will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be repaid to the Borrower in accordance with Section 3.01(8)) so long as such efforts would not, in the sole determination of such Tax Indemnitee, result in any additional out-of-pocket costs or expenses not reimbursed by such Loan Party or be otherwise materially disadvantageous to such Tax Indemnitee. A certificate as to the amount of such payment or liability delivered by the Tax Indemnitee (with a copy to the Administrative Agent) or by the Administrative Agent on its own behalf or on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(7) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any 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), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.07(7) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (7).

(8) If and to the extent that any party determines, in its sole discretion (exercised in good faith), determines that it has received a refund (whether received in cash or applied as a credit against any other cash Taxes payable) of any Taxes in respect of which it has received indemnification payments or additional amounts under this Section 3.01, then such indemnified party shall pay to the relevant indemnifying party the amount of such refund, net of all out-of-pocket expenses of the indemnified party (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the indemnifying party, upon the request of the indemnified party, agrees to repay the amount paid over by the indemnified party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the indemnified party to the extent the indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(8), in no event will the indemnified party be required to pay any amount to an indemnified party pursuant to this Section 3.01(8) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require an indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any indemnifying party or any other Person.

(9) The agreements in this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement, and the payment, satisfaction or discharge of the Loans and all other amounts payable hereunder.

SECTION 3.02 Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

SECTION 3.03 Inability to Determine Rates.

(a) If the Administrative Agent (in the case of clause (1) or (2) below) or the Required Lenders (in the case of clause (3) below) reasonably determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that:

(1) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan,

(2) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or

(3) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan,

the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the Eurodollar Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the Eurodollar Rate with a Benchmark Replacement pursuant to Sections 3.03(b) through 3.03(e) will occur prior to the applicable Benchmark Transition Start Date.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent, in consultation with the Borrower, 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.

(d) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to Sections 3.03(b) through 3.03(e) 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 Sections 3.03(b) through 3.03(e).

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Rate Loan, conversion to or continuation of Eurodollar Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of Base Rate based upon the Eurodollar Rate will not be used in any determination of Base Rate.

SECTION 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurodollar Rate Loans.

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

(a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (which term shall include Issuing Banks for purposes of this Section 3.04);

(b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or

(c) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender that is not otherwise accounted for in the definition of "Eurodollar Rate" or this clause (1);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(1) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably 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 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 Commitments of such Lender or the Loans made by it to a level below that which such Lender or such Lender's holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

SECTION 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(1) any continuation, conversion, payment or prepayment of any Eurodollar Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(2) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Eurodollar Rate Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a Eurodollar Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Eurodollar Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

SECTION 3.06 Matters Applicable to All Requests for Compensation.

(1) 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 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 good faith judgment of such Lender such designation or assignment (a) 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 (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Eurodollar Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Eurodollar Rate Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of Eurodollar Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender's Eurodollar Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Rate Loans made by other Lenders, as applicable, are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Eurodollar Rate Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Eurodollar Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 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 Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender's intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.07 Mitigation Obligations; Replacement of Lenders under Certain Circumstances.

(1) If (a) any Lender requests compensation under Section 3.04 or (b) a Loan Party is required to pay any Non-Excluded Taxes or Other Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, then such Lender shall (at the request of the applicable Loan Party) 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 (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 3.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Loan Parties hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If (a) any Lender requests compensation under Section 3.04 or ceases to make Eurodollar Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (b) the Borrower is required to pay any Non-Excluded Taxes or Other Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (c) any Lender is a Non-Consenting Lender or (d) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party here-to, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent,

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (2)(c) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

(i) Borrower may not make such election with respect to any Lender that is also an Issuing Bank unless, prior to the effectiveness of such election, Borrower shall have caused each outstanding Letter of Credit issued thereby to be cancelled or secured with Cash Collateral in the Minimum Collateral Amount;

(ii) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(4);

(iii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iv) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided* that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(v) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(vi) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vii) such assignment does not conflict with applicable Laws; and

(viii) the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender and repay all Obligations of the Borrower owing to such Lender relating to the Loans held by such Lender as of such termination date; *provided* that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "**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 3.08 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

Article IV

Conditions Precedent

SECTION 4.01 Conditions on Closing Date. The obligation of each Lender to make Loans hereunder is subject to satisfaction (or waiver) of the following conditions precedent, except as otherwise agreed between the Borrower and the Administrative Agent:

(1) The Administrative Agent's receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party (other than in the case clause (1)(e) below):

(a) a Funding Notice, if applicable;

(b) executed counterparts of this Agreement and the Guaranty;

(c) a Note for each Lender which requests a Note at least three (3) Business Days prior to the Closing Date;

(d) certificates of good standing from the secretary of state of the state of organization of each Loan Party and Top Parent, customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party and Top Parent certifying true and complete copies of the Organizational Documents attached thereto and evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and/or the other Loan Documents to which such Loan Party or Top Parent is a party or is to be a party on the Closing Date;

(e) a customary legal opinion from (i) Baker & Hostetler LLP, counsel to the Loan Parties, and (ii) each local counsel to the Loan Parties listed on Schedule 4.01(1)(e) in the jurisdictions indicated on such schedule;

(f) a certificate of a Responsible Officer certifying that the conditions set forth in Sections 4.01(6), 4.01(7), 4.01(8) and 4.01(13) have been satisfied;

(g) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I;

(h) a Borrowing Base Certificate which reflects the results of the Closing A/R Field Examination and the Closing Inventory Appraisal;

(i) a letter of direction from the Borrower addressed to the Administrative Agent, on behalf of itself and the Lenders, directing the disbursement on the Closing Date of the proceeds of the Loans made on such date, if applicable;

(2) The Collateral Agent's receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party:

(a) each Collateral Document set forth on Schedule 4.01(2)(a) required to be executed on the Closing Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with (subject to Section 6.13(2)):

(i) certificates, if any, representing the Pledged Collateral that is certificated common equity of Holdings, the Borrower and the Loan Parties' Subsidiaries (other than Excluded Subsidiaries) accompanied by undated transfer powers executed in blank; provided that this condition shall be deemed satisfied upon delivery to the Pari Collateral Agent as bailee for the Collateral Agent pursuant to the ABL Intercreditor Agreement, if applicable; and

(ii) evidence that all UCC-1 financing statements in the appropriate jurisdiction or jurisdictions for each Loan Party and Top Parent that the Administrative Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been provided for, and arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made;

(3) The Arrangers shall have received the Annual Financial Statements and the Quarterly Financial Statements.

(4) [reserved].

(5) The Administrative Agent shall have received at least two (2) Business Days prior to the Closing Date all documentation and other information in respect of the Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested in writing by it at least ten (10) Business Days prior to the Closing Date.

(6) The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects on and as of the Closing Date; *provided* that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(7) No Default shall exist or would result from the proposed Borrowing on the Closing Date or from the application of the proceeds therefrom.

(8) Since December 31, 2016, no change, event or circumstance shall have occurred that has had or would reasonably be expected to have a Material Adverse Effect.

(9) On or prior to the Closing Date, the Borrower shall have obtained (a) public corporate credit ratings from each of Moody's and S&P and (b) public credit ratings for the Term Loans and Senior Secured Notes from each of Moody's and S&P.

(10) Each of the Collateral Trust Agreement, the ABL Intercreditor Agreement and the Grant Clawback Agreement shall have been fully executed by each of the parties thereto.

(11) All fees and expenses (in the case of expenses, to the extent invoiced at least three (3) Business Days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower)) required to be paid hereunder on the Closing Date shall have been paid, or shall be paid substantially concurrently with any initial Borrowing on the Closing Date.

(12) (a) The Borrower shall have issued the Senior Secured Notes and funded the Term Loan under the Term Facility and (b) the Closing Date Refinancing shall have been consummated and (c)(x) Holdings shall have received at least $62.7 million from the issuance Preferred Stock (on terms reasonably acceptable to the Administrative Agent) to an Investor and (y) Holdings shall have contributed such proceeds to the Borrower as cash common Equity Interests.

(13) After giving effect to the Transactions, the Borrower shall have Excess Availability in excess of $90.0 million.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 4.02 Conditions to Borrowings after Closing Date. The obligation of each Lender to make any Loan, or Issuing Bank to issue any Letter of Credit (or, at Borrower's request, to amend any Letter of Credit to extend its term or increase its amount), on any Credit Date after the Closing Date is subject to the following conditions precedent:

(1) The representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing*; provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(2) No Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds therefrom.

(3) After making the Credit Extensions requested on such Credit Date, the Total Utilization of Revolving Commitments shall not exceed the Line Cap then in effect;

(4) Either (a) the Administrative Agent shall have received a Funding Notice in accordance with the requirements hereof or (b) on or before the date of issuance of any Letter of Credit, Administrative Agent and Issuing Bank shall have received all other information required by the applicable Issuance Notice, and such other documents or information as Issuing Bank may reasonably require in connection with the issuance of such Letter of Credit.

(5) Each Funding Notice submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(1), (2) and (3) have been satisfied on and as of the date of the applicable Borrowing.

(6) If any proposed Credit Extension would trigger a Covenant Period that did not then exist or otherwise be made during a Covenant Period, the Administrative Agent shall have received within one (1) Business Day prior to such request a Compliance Certificate demonstrating (with detailed calculations) that the Fixed Charge Coverage Ratio (calculated for purposes of demonstrating compliance with Section 7.12) is no less than 1.00:1.00 based on the most recent financial statements delivered pursuant to Section 6.01.

In addition, solely to the extent the Borrower has delivered to the Administrative Agent a Notice of Intent to Cure pursuant to Section 8.04, no request for a Credit Extension shall be honored after delivery of such notice until the applicable Cure Amount specified in such notice is actually received by the Borrower. For the avoidance of doubt, the preceding sentence shall have no effect on the continuation or conversion of any Loans outstanding.

Article V

Representations and Warranties

The Borrower and, in respect of Sections 5.01, 5.02, 5.04, 5.06, 5.13, 5.17 and 5.21 only, Holdings, represent and warrant to the Administrative Agent and the Lenders, at the time of each Credit Extension (solely to the extent required to be true and correct for such Credit Extension pursuant to Article IV):

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws orders, writs, injunctions and orders; and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (2)(a), (3), (4) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person's Organizational Documents;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted by Section 7.01) under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement), and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

SECTION 5.05 Financial Statements; No Material Adverse Effect.

(1) The Annual Financial Statements and the Quarterly Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date(s) thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (i) except as otherwise expressly noted therein and (ii) subject, in the case of the Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(2) Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(3) The forecasts of consolidated balance sheets and statements of income of the Borrower and its Subsidiaries for each fiscal year ending after the Closing Date until no earlier than the fifth anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that:

(a) no forecasts are to be viewed as facts,

(b) all forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or the Investors,

(c) no assurance can be given that any particular forecasts will be realized and

(d) actual results may differ and such differences may be material.

SECTION 5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Holdings, the Borrower or any of the Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

SECTION 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or the Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters.

SECTION 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Restricted Subsidiaries has good and valid record title in fee simple to, or good and valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Permitted Liens and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Restricted Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Restricted Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Restricted Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; (d) none of the Loan Parties or any of their respective Restricted Subsidiaries or predecessors has treated, stored, transported or Released Hazardous Materials at or from any currently or formerly owned, leased or operated real estate or facility except for such actions that were in compliance with Environmental Law; and (e) to the knowledge of any Loan Party or any Restricted Subsidiary, there are no occurrences, facts, circumstances or conditions which could reasonably be expected to give rise to an Environmental Claim.

SECTION 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Restricted Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations under applicable Law) due and payable by it (whether or not shown in a Tax return), except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP.

There is no Tax assessment, deficiency or other claim against any Loan Party or any of its Restricted Subsidiaries that is currently pending or that has been proposed in writing by any Governmental Authority except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) (a) No ERISA Event has occurred or is reasonably expected to occur; and

(b) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan by an amount, which, if all of such Pension Plans were terminated, would result in a Material Adverse Effect.

(4) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Laws, and (b) none of Holdings, the Borrower or any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

SECTION 5.12 Subsidiaries.

(1) As of the Closing Date, after giving effect to the Transactions, all of the outstanding Equity Interests in the Borrower and its Restricted Subsidiaries have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests that constitute Collateral owned by Top Parent in Holdings, by Holdings in the Borrower, and by the Borrower or any Subsidiary Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents and (b) any nonconsensual Permitted Lien.

(2) As of the Closing Date, Schedule 5.12 sets forth:

(a) the name and jurisdiction of organization of each Subsidiary, and

(b) the ownership interests of Top Parent in Holdings, of Holdings in the Borrower and of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership.

SECTION 5.13 Margin Regulations; Investment Company Act.

(a) As of the Closing Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is required to be registered as an "investment company" under the Investment Company Act of 1940.

SECTION 5.14 Disclosure. As of the Closing Date, none of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Subsidiary Guarantor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature.

SECTION 5.15 Intellectual Property; Licenses, etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights (collectively, "**IP Rights**") that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and the Subsidiaries, on a consolidated basis, are Solvent.

SECTION 5.17 USA PATRIOT Act; Anti-Terrorism Laws. To the extent applicable, each of Holdings, the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the USA PATRIOT Act, and (ii) the Trading with the Enemy Act, as amended.

SECTION 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to Collateral Agent (or the Pari Collateral Agent as bailee for the Collateral Agent pursuant to the ABL Intercreditor Agreement, if applicable) of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the effects of perfection or non- perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement, (C) on the Closing Date and until required pursuant to Section 6.13 or 4.01, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01 or (D) any Excluded Assets.

SECTION 5.19 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, each Account reflected therein as eligible for inclusion in the Borrow-ing Base is an Eligible Account and the inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory.

SECTION 5.20 Beneficial Ownership Certification. As of the date provided by Borrower, the information included in the Beneficial Ownership Certification is true and correct in all material respects.

SECTION 5.21 OFAC; Sanctions; Anti- Corruption Laws; Anti-Money Laundering Laws. No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance (i) with all Sanctions and (ii) in all material respects, with all Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Cash Management Services Provider, or other individual or entity participating in any transaction).

Article VI

Affirmative Covenants

So long as the Termination Conditions have not been satisfied, the Borrower shall (and, with respect to Sections 6.05(1), 6.11 and 6.20 only, Holdings shall), and shall (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) cause each of the Restricted Subsidiaries to:

SECTION 6.01 Financial Statements and Borrowing Base Certificate. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in Section 6.02) each of the following:

(1) subject to the immediately succeeding proviso, within ninety (90) days after the end of each fiscal year of the Borrower (or, in the case of the fiscal year ending December 31, 2017, within one hundred twenty (120) days after the end of such fiscal year), commencing with the fiscal year ending December 31, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income and cash flows for such fiscal year, together with related notes thereto and management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower, setting forth in each case in comparative form the figures for the previous fiscal year, in reasonable detail and all prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a "going concern" or like qualification that is due to (i) the impending maturity of the Facility, the Term Facility, the Senior Secured Notes, the Specified Pari Passu Lien Debt or any permitted refinancings thereof, (ii) any anticipated inability to satisfy the Financial Covenant or (iii) an actual Default of the Financial Covenant);

(2) within thirty (30) days after the end of each fiscal month of each fiscal year of the Borrower commencing with the month ending August 31, 2017 (or, after a Reporting Trigger Date, within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal month or fiscal quarter, as applicable, and the related (a) consolidated statement of income for such fiscal month or fiscal quarter, as applicable, and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal month or fiscal quarter, as applicable, of the previous fiscal year and the corresponding portion of the previous fiscal year (*provided* that no such comparative information will be required if such comparative data would be for a date or period prior to January 1, 2017), accompanied by an Officer's Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with management's discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower;

(3) within ninety days (90) days after the end of each fiscal year of the Borrower (or, in the case of the fiscal year ending December 31, 2017, within one hundred twenty (120) days after the end of such fiscal year), commencing with respect to the fiscal year ending December 31, 2017, a consolidated budget for the following fiscal year on a quarterly basis as customarily prepared by management of the Borrower for its internal use (including any projected consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the following fiscal year and the related consolidated statements of projected income, in each case, to the extent prepared by management of the Borrower and included in such consolidated budget), which projected financial statements shall be prepared in good faith on the basis of assumptions believed to be reasonable at the time of preparation of such projected financial statements (it being understood that any such projections are not to be viewed as facts, are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material); *provided* that the requirements of this Section 6.01(3) shall not apply at any time following the consummation of the first public offering of the common equity of any Parent Company after the Closing Date;

(4) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(1) and 6.01(2), the related unaudited (it being understood that such information may be audited at the option of the Borrower) consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; and

(5) promptly following each delivery of the information required pursuant to Section 6.01(1) and 6.01(2) above (but no more frequently than quarterly), commencing with the delivery of information with respect to the fiscal quarter ending September 30, 2017, to use commercially reasonable efforts to participate in a conference call for Lenders to discuss the financial position and results of operations of the Borrower and its Subsidiaries for the most recently ended fiscal period for which financial statements have been delivered; *provided,* that if the Borrower is holding a conference call open to the public to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently ended fiscal period for which financial statements have been delivered pursuant to Sections 6.01(1) or 6.01(2) above, the Borrower will not be required to hold a second, separate call for the Lenders so long as the Lenders are provided access to such initial conference call and the ability to ask questions thereon.

(6) as soon as available, but in any event within 20 days (or, during any Weekly Reporting Period, within three Business Days) after each Borrowing Base Reporting Date, a completed Borrowing Base Certificate calculating and certifying the Borrowing Base and the Excess Availability as of such Borrowing Base Reporting Date, in each case signed by a Financial Officer of the Borrower and accompanied by the supporting documentation required in connection therewith as set forth on Schedule 6.01.

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Borrower's or such Parent Company's Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 6.01); *provided* that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will not be subject to any qualification as to the scope of such audit (but may contain a "going concern" or like qualification that is due to (i) the impending maturity of the Facility, the Senior Secured Notes or any permitted refinancings thereof, (ii) any anticipated inability to satisfy the Financial Covenant or (iii) an actual Default of the Financial Covenant).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain all purchase accounting adjustments relating to transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements.

SECTION 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02):

(1) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower commencing with such delivery for the fiscal month ending August 31, 2017; provided, that the calculations under clause (2) of the definition of Compliance Certificate (with respect to the calculation of Fixed Charge Coverage Ratio under the first alternative of such definition) shall commence with the period ending March 31, 2018;

(2) promptly after the same are publicly available, copies of all special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(3) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the terms of the Senior Secured Notes Indenture so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(4) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), (a) a report setting forth the information required by Section 1 of the Perfection Certificate (or confirming that there has been no change in such information since the later of the Closing Date or the last report delivered pursuant to this clause (a)) and (b) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list; and

(5) promptly, but subject to the limitations set forth in Section 6.10 and Section 10.09, such additional information regarding the business and financial affairs of any Loan Party or any Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's (or any Parent Company's) website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency 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 will deliver paper copies of such documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02) 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 or link and, upon the Administrative Agent's request, 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.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on Intralinks, SyndTrak, ClearPar or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to Holdings, their Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities (each, a "**Public Lender**"). The Borrower hereby agrees that (i) at the Administrative Agent's request, all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" will appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower will be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as containing only Public-Side Information (*provided*, *however*, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked "PUBLIC" and, except to the extent the Borrower notifies the Administrative Agent to the contrary, any Borrower Materials provided pursuant to Section 6.01(1), 6.01(2) or 6.02(1) are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (iv) the Administrative Agent and the Arrangers shall be entitled to treat Borrower Materials that are not specifically identified as "PUBLIC" as being suitable only for posting on a portion of the Platform not designated as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Anything to the contrary notwithstanding, nothing in this Agreement will require Holdings, the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product; *provided* that in the event that the Borrower does not provide information that otherwise would be required to be provided hereunder in reliance on the exclusions in this paragraph relating to violation of any obligation of confidentiality, the Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent promptly upon obtaining knowledge that such information is being withheld (but solely if providing such notice would not violate such obligation of confidentiality).

SECTION 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent of:

(1) the occurrence of any Default (which notice shall be provided to all Lenders);

(2) any event or condition that has resulted, or could reasonably be expected to result, in Eligible Accounts and/or Eligible Inventory in an aggregate amount of $2,500,000 or more reflected on the Borrowing Base Certificate then most recently delivered pursuant to Section 6.01(6) (or, prior to the first such delivery, the Borrowing Base Certificate referred to in Section 4.01(1)(h)) ceasing to qualify as Eligible Accounts or Eligible Inventory, as applicable (including any such cessation in qualification as a result of any disposition, but excluding any such cessation in qualification as a result of a disposition of Eligible Inventory to customers in the ordinary course of business or collection of Eligible Accounts or as a result of any determination with respect to the Borrowing Base eligibility made by the Administrative Agent in its Permitted Discretion in accordance with the terms hereof);

(3) the occurrence of, or receipt by Holdings or Borrower of any written notice claiming the occurrence of, any breach or default by Holdings or Borrower under any lease or other agreement relating to any location leased by Borrower, or any third party warehouse or any consignment or bailee arrangement, in each case on, in or with which any material Inventory is located; and

(4) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any of its Subsidiaries, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any violation by any Loan Party or any of its Subsidiaries of, or liability under, any Environmental Law or Environmental Permit, or (c) the occurrence of any ERISA Event that, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(4), has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1), (2), (3) or (4) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04 Payment of Obligations. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clause (1) or (2) to the extent (other than with respect to the preservation of the existence of the Borrower) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, liquidation, dissolution or disposition permitted by Article VII.

SECTION 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Borrower or any of the Restricted Subsidiaries excepted.

SECTION 6.07 Maintenance of Insurance.

Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Borrower's and the Restricted Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried*; provided* that notwithstanding the foregoing, in no event will the Borrower or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. Subject to Section 6.13(2), each such policy of insurance will, as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder.

SECTION 6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and comply, as applicable, with the USA PATRIOT Act, and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

SECTION 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

SECTION 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower and subject, in all events, to the conditions of any applicable lease or sublease*; provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.

SECTION 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(1) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Domestic Subsidiary (other than any Excluded Subsidiary) by any Loan Party, (ii) the designation of any existing direct or indirect wholly owned Domestic Subsidiary (other than any Excluded Subsidiary) as a Restricted Subsidiary, (iii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly owned Domestic Subsidiary or (iv) an Excluded Subsidiary that is a wholly owned Domestic Subsidiary ceasing to be an Excluded Subsidiary but continuing as a Restricted Subsidiary of the Borrower, (y) upon the acquisition of any material assets by the Borrower or any Subsidiary Guarantor or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) within sixty (60) days (or such greater number of days specified below) after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion, cause each such Domestic Subsidiary that is required to become a Subsidiary Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and

(A) within sixty (60) days after such formation, acquisition or designation, cause each such Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent, supplements to the Security Agreement, a counterpart signature page to the Intercompany Note, Intellectual Property Security Agreements and other security agreements and documents (if applicable), as reasonably requested by the Administrative Agent and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements and other Collateral Documents in effect on the Closing Date as amended and in effect from time to time), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) within sixty (60) days after such formation, acquisition or designation, cause each such Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and, if applicable, a joinder to the Intercompany Note substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Domestic Subsidiary and required to be pledged pursuant to the Collateral Documents;

(C) within sixty (60) days after such formation, acquisition or designation, take and cause (i) the applicable Domestic Subsidiary that is required to become a Subsidiary Guarantor pursuant to the Collateral and Guarantee Requirement and (ii) to the extent applicable, each direct or indirect parent of such applicable Domestic Subsidiary, in each case, to take customary action(s) (including the filing of Uniform Commercial Code financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Permitted Liens) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days after the reasonable request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request.

(2) Reserved.

SECTION 6.12 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

SECTION 6.13 Further Assurances and Post-Closing Covenant.

(1) Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonable request from time to time in order to carry out more effectively the purposes of the Collateral Documents and to satisfy the Collateral and Guarantee Requirement.

(2) As promptly as practicable, and in any event no later than ninety (90) days after the Closing Date or such later date as the Administrative Agent reasonably agrees to in writing, including to reasonably accommodate circumstances unforeseen on the Closing Date, deliver the documents or take the actions specified in Schedule 6.13(2), in each case except to the extent otherwise agreed by the Administrative Agent pursuant to its authority as set forth in the definition of the term "Collateral and Guarantee Requirement."

SECTION 6.14 Use of Proceeds. The proceeds of the Loans, together with the proceeds of the Senior Secured Notes, the Term Loans and cash on hand, will be used (i) to repay Indebtedness incurred under the Closing Date Refinanced Indebtedness, in each case together with any premium and accrued and unpaid interest thereon and any fees and expenses with respect thereto, (ii) to pay the Transaction Expenses (including in connection with the issuance of the Senior Secured Notes), and (iii) for working capital and general corporate purposes and for any other purpose not prohibited by the Loan Documents; provided that (x) no part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrower's knowledge after due care and inquiry, indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person, and (y) that no part of the proceeds of any Loan or Letter of Credit will be used, directly or to Borrower's knowledge after due care and inquiry, indirectly, 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 Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

SECTION 6.15 [Intentionally Omitted].

SECTION 6.16 Master Equipment Lease. Within 30 days after the applicable Early Buyout Option Date of each Equipment Sub-sublease, Borrower shall exercise its option to terminate the applicable Equipment Sub- sublease and the associated Sublease (as defined in the Equipment Lease) pursuant to Section 13 of such Equipment Sub-sublease.

SECTION 6.17 Field Examinations and Inventory Appraisals. The Loan Parties will permit the Administrative Agent and any Persons designated by the Administrative Agent (including any consultants, accountants, appraisers and attorneys designated by the Administrative Agent) to conduct (a) field examinations of the books and records of the Borrower and the other Loan Parties relating to the Borrower's computation of the Borrowing Base or any component thereof and the related practices and reporting and control systems and (b) appraisals of the Inventory included in the Borrowing Base, all upon reasonable notice and at reasonable times during normal business hours and as often as may reasonably be requested by the Administrative Agent; provided that, notwithstanding anything to the contrary in Section 10.04, only one such field examination and only one such Inventory appraisal in any period of 12 consecutive months shall be at the expense of the Loan Parties (other than the first 12 consecutive months after the Closing Date, in which three Inventory appraisals shall be at the expense of the Loan Parties) unless (i) an Event of Default shall have occurred and be continuing, in which case any field examination and appraisals commenced during the continuance of such Event of Default shall be at the expense of the Loan Parties, or (ii) Excess Availability shall be less than the greater of (x) 20% of the Line Cap and (y) $25,000,000 on any day, in which case one additional field examination and one additional appraisal may be conducted at the expense of the Loan Parties during the period of 12 consecutive months commencing on such day; provided further that, notwith-standing the foregoing, in the event that the Borrower shall have consummated any Permitted Acquisition or similar Investment, the Borrower may request that the Administrative Agent conduct a field examination and an appraisal with respect to the Accounts and Inventory acquired by the Loan Parties as a result thereof, and any such field examinations and appraisals shall be at the expense of the Loan Parties. For purposes of this Section 6.17, it is understood and agreed that a single field examination and a single appraisal may be conducted at multiple relevant sites and involve one or more Loan Parties and their assets. All field examinations and appraisals shall be conducted by professionals (including appraisers) reasonably satisfactory to the Administrative Agent and conducted and prepared on a basis reasonably satisfactory to the Administrative Agent. The Loan Parties acknowledge that the Administrative Agent, after exercising its rights under this Section 6.17, 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.

SECTION 6.18 Cash Management Systems.

(1) The Loan Parties shall, as promptly as practicable after the Closing Date (and in any event within 120 days after the Closing Date, or such longer period as the Administrative Agent may agree to) and at all times thereafter, (i) use commercially reasonable efforts to cause all the Account Debtors on any and all Accounts of the Loan Parties to make all payments and remittances with respect to such Accounts into one or more deposit accounts located with a depositary bank in the United States of America (or into one or more lockboxes established and maintained by a depositary bank in the United States of America and with respect to which such depositary bank retrieves and process all checks and other evidences of payment so received at such lockbox and deposits the same into one or more deposit accounts located with it in the United States of America) (such deposit accounts being referred to as the "**Collection Deposit Accounts**" and such lockboxes being referred to as the "**Collection Lockboxes**"), (ii) cause all proceeds of the disposition of any ABL Priority Collateral to be deposited directly into a Collection Deposit Account, (iii) cause all amounts received in the Collection Lockboxes to be remitted on a daily basis to the Collection Deposit Accounts, and (iv) deposit or cause to be deposited promptly, and in any event no later than the second Business Day after the date of its receipt thereof, all Cash, checks, drafts or other similar items of payment received by it relating to or constituting payments or remittances with respect to any Accounts of any Loan Party into one or more Collection Deposit Accounts or Collection Lockboxes in precisely the form in which they are received (but with any endorsements of such Loan Party necessary for deposit or collection), and until they are so deposited to hold such payments in trust for the benefit of the Collateral Agent.

(2) The Loan Parties shall use commercially reasonable efforts to ensure that as promptly as practicable after the Closing Date (but in any event within 120 days after the Closing Date, or such longer period as the Administrative Agent may agree to) and at all times thereafter each depositary bank where a Collection Deposit Account is maintained, and each depositary bank that maintains a Collection Lockbox, shall have entered into a Control Agreement with respect to each such deposit account or lockbox. Upon the commencement and during the continuance of any Cash Dominion Period, all funds deposited into any Collection Deposit Account shall be directed by wire transfer on a daily basis to the Administrative Agent Account.

(3) Any Loan Party may replace any Collection Deposit Account or Collection Lockbox, or establish any new Collection Deposit Account or Collection Lockbox; provided that, in each case, that each such replacement or new Collection Deposit Account or Collection Lockbox shall be subject to a Control Agreement in favor of the Collateral Agent and shall otherwise meet the requirements of this Section 6.18.

(4) All amounts deposited in the Administrative Agent Account shall be deemed received by the Administrative Agent in accordance with Section 2.13 and during any Cash Dominion Period shall be applied (and allocated) by the Administrative Agent in accordance with Section 2.05(3)(b). In no event shall any amount be so applied unless and until such amount shall have been credited in immediately available funds to the Administrative Agent Account. Any amount so received in a currency other than Dollars may be converted to Dollars in accordance with the Administrative Agent's customary practices.

(5) The Collateral Agent shall promptly (but in any event within one Business Day) furnish written notice to each depositary bank subject to a Control Agreement of any termination of a Cash Dominion Period.

(6) Without the prior written consent of the Administrative Agent, no Loan Party shall modify or amend the instructions pursuant to any of the Control Agreements. So long as no Cash Dominion Period is continuing, each Loan Party shall, and the Collateral Agent hereby authorizes each Loan Party to, enforce and collect all amounts owing on the Inventory and Accounts and each Loan Party shall have sole control over the manner of disposition of funds in the Collection Deposit Accounts subject to the Deposit Agreement; provided that such authorization may, at the direction of the Collateral Agent, be terminated during any Cash Dominion Period.

SECTION 6.19 Location of Inventory. Each Loan Party shall maintain any Inventory located in the continental United States of America (other than Inventory in transit from one location set forth on Schedule 6.19 to another location set forth on Schedule 6.19 for a period of not more than 10 days) solely at one or more locations set forth on Schedule 6.19; provided that the Loan Parties may also maintain their Inventory at such other location as may have been specified in writing by Borrower to the Administrative Agent upon at least 10 days' prior notice, so long as such notice contains all the information with respect to such location contemplated to be provided with respect to a location by Schedule 6.19 (and, upon delivery of such notice, Schedule 6.19 shall be deemed to have been amended to set forth each such newly specified location).

SECTION 6.20 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws. Each Loan Party will, and will cause each of its Subsidiaries to, comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

Article VII

Negative Covenants

So long as the Termination Conditions are not satisfied:

SECTION 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) that secures obligations under any Indebtedness or any related guarantee of Indebtedness on any asset or property of the Borrower or any Restricted Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

For purposes of determining compliance with this Section 7.01, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in the definition thereof, but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, the Borrower will, in its sole discretion, be entitled to divide, classify or reclassify (other than the reclassification of the Liens securing obligations under this Agreement, the Term Facility and the Senior Secured Notes), in whole or in part, any such Lien (or any portion thereof) among one or more of such categories or clauses in any manner.

SECTION 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "**incur**" and collectively, an "**incurrence**") with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock;

provided that the Borrower may incur unsecured Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur unsecured Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, in each case, if the Fixed Charge Coverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period (such Indebtedness, Disqualified Stock or Preferred Stock, "**Permitted Ratio Debt**"); *provided further* that Permitted Ratio Debt in the form of Indebtedness (x) shall not mature earlier than the Maturity Date and (y) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Permitted Ratio Debt.

(b) The provisions of Section 7.02(a) will not apply to:

(1) Indebtedness under the Loan Documents;

(2) the incurrence by the Borrower and any Guarantor of (i) Indebtedness represented by the Senior Secured Notes and any Guarantees thereof in an aggregate principal amount not to exceed $600.0 million and (ii) the Term Obligations in an aggregate principal amount not to exceed the amount of Term Obligations permitted to be incurred under the Term Credit Agreement as in effect on the Closing Date;

(3) Indebtedness secured on a *pari passu* basis with the Term Obligations under the Term Credit Agreement (including any "Additional Notes" under the Senior Secured Notes Indenture) in an amount not to exceed, when combined with any Indebtedness incurred pursuant to clause 2(ii) above, the Pari Passu Secured Debt Cap; *provided* that any such Indebtedness incurred pursuant to this clause (3) is incurred in accordance with the provisions of Section 7.02(b)(3) of the Term Credit Agreement as in effect on the Closing Date;

(4) the incurrence of Indebtedness by the Borrower and any Restricted Subsidiary in existence on the Closing Date (excluding Indebtedness described in the preceding clauses (1) and (2) and clause (31) of this Section 7.02(b)); *provided* that any such item of Indebtedness with an aggregate outstanding principal amount on the Closing Date in excess of $5.0 million shall be set forth on Schedule 7.02;

(5) the incurrence of Attributable Indebtedness and Indebtedness (including Purchase Money Obligations) and the issuance of Disqualified Stock incurred or issued by the Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock and/or Preferred Stock incurred or issued and outstanding under this clause (5), at such time not to exceed (as of the date such Indebtedness, Disqualified Stock and/or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) $50.0 million and (II) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);

(6) Indebtedness incurred by the Borrower or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(7) the incurrence of Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or property or a Person that becomes a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets, property or a Person that becomes a Subsidiary for the purpose of financing such acquisition;

(8) the incurrence of Indebtedness or the issuance of Disqualified Stock by the Borrower and owing to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to any Restricted Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Subsidiary Guarantor is expressly subordinated in right of payment to the Loans to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent the Disqualified Stock is then outstanding) not permitted by this clause (8);

(9) the incurrence of Indebtedness by a Restricted Subsidiary and owing to the Borrower or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent such Indebtedness constitutes a Permitted Investment; *provided* that any such Indebtedness for borrowed money incurred by a Subsidiary Guarantor and owing to a Restricted Subsidiary that is not a Subsidiary Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Subsidiary Guarantor to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (9);

(10) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Borrower or any Restricted Subsidiary) to the extent such Preferred Stock or Disqualified Stock constitutes a Permitted Investment; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (10);

(11) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(12) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal, surety and similar bonds and performance, banker's acceptance facilities and completion guarantees and similar obligations (including guarantees thereof) provided by the Borrower or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(13) the incurrence of Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (13), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (I) $50.0 million and (II) 35.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance) *plus*, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased *plus* (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock;

(14) the incurrence or issuance by the Borrower of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to Refinance any Indebtedness (including any Designated Revolving Commitments) incurred or Disqualified Stock or Preferred Stock issued as permitted under Section 7.02(a) and Section 7.02(b)(2), (3), (4), (5) and (13) above, this clause (14) and Section 7.02(b)(15) below, or any successive Refinancing Indebtedness with respect to any of the foregoing;

(15) the incurrence or issuance of:

(a) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary, incurred or issued to finance an acquisition or investment (or other purchase of assets) or that is assumed by the Borrower or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets), including any Acquired Indebtedness, and

(b) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement, including any Acquired Indebtedness,

provided that in the case of the preceding clauses (a) and (b), either:

(i) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Borrower would be permitted to incur at least $1.00 of additional Permitted Ratio Debt;

(ii) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Fixed Charge Coverage Ratio of the Borrower for the Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) would be no less than the Fixed Charge Coverage Ratio immediately prior to giving effect to such incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, in each case, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;

provided such Indebtedness must comply with the provisions set forth in Section 7.02(b)(15) (A) and (B) of the Term Credit Agreement as in effect on the Closing Date.

(16) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(17) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued in connection herewith, in a principal amount not in excess of the available amount of such letter of credit or bank guarantee;

(18) (a) the incurrence of any guarantee by the Borrower or a Restricted Sub-sidiary of Indebtedness or other obligation of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Restricted Subsidiary is permitted by this Agreement, or (b) any co-issuance by the Borrower or any Restricted Subsidiary of any Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Restricted Subsidiary is permitted by this Agreement; *provided* that in the case of clauses (a) and (b), if the underlying Indebtedness or other obligation permitted by this Agreement is not incurred by a Loan Party, then such guarantee or co-issuance shall not be incurred by a Loan Party;

(19) the incurrence of Indebtedness issued by the Borrower or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Borrower or any Parent Company to the extent described in Section 7.05(b)(4);

(20) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(21) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower or any Subsidiary Guarantors and (b) Indebtedness in respect of Cash Management Services, including Designated Cash Management Services Obligations;

(22) Indebtedness incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's-length commercial terms;

(23) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(24) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Subsidiary Guarantors in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (24), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (a) $50.0 million and (b) 35% of Consolidated EBITDA of the Borrower for the most recently ended Test Period (calculated on a pro forma basis after giving effect to such incurrence or issuance);

(25) [reserved];

(26) [reserved];

(27) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners and guarantees required by Governmental Authorities in the ordinary course of business;

(28) [reserved];

(29) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Borrower or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(30) repayment obligations with respect to grants from Governmental Authorities;

(31) [reserved];

(32) [reserved]; and

(33) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (32) above.

(c) For purposes of determining compliance with this Section 7.02:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (33) above or is entitled to be incurred pursuant to Section 7.02(a), the Borrower, in its sole discretion, may divide and classify and may subsequently re-divide and reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or a portion thereof) in such of the above clauses or under Section 7.02(a) as determined by the Borrower at such time; *provided* that all Indebtedness (x) incurred hereunder on the Closing Date, (y) incurred pursuant to the Term Facility on the Closing Date or (z) represented by the Senior Secured Notes and related Guarantees on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (2), respectively, and may not be reclassified;

(2) the Borrower is entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 7.02(a) and (b), subject to the proviso to the preceding clause (1) of this Section 7.02(c);

(3) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued pursuant to Section 7.02(b) (other than Section 7.02(b)(2) or Section 7.02(b)(15)) on the same date that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued under Section 7.02(a), 7.02(b)(2) or 7.02(b)(15), then the Fixed Charge Coverage Ratio, or applicable leverage ratio, will be calculated with respect to such incurrence or issuance under Section 7.02(a), 7.02(b)(2) or 7.02(b)(15) without regard to any incurrence or issuance under Section 7.02(b) (other than with respect to any incurrence under Section 7.02(b)(2) or Section 7.02(b)(15)); *provided* that unless the Borrower elects otherwise, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock will be deemed incurred or issued first under Section 7.02(a), 7.02(b)(2) or 7.02(b)(15) to the extent permitted with the balance incurred under Section 7.02(b) (other than pursuant to Section 7.02(b)(2) or 7.02(b)(15)); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, or an issuance of Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to clauses (1), (2), (3), (4), (5), (13), (14) and (15) of Section 7.02(b) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased and (II) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the Dollar equivalent principal amount of Indebtedness, liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower Dollar equivalent)); *provided* that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued to Refinance other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

For purposes of determining compliance with this Section 7.02, if any Indebtedness is incurred, or Disqualified Stock or Preferred Stock is issued, in reliance on a Basket measured by reference to a percentage of Consolidated EBITDA, and any refinancing thereof would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such newly incurred Indebtedness, the liquidation preference of such newly issued Disqualified Stock or the amount of such newly issued Preferred Stock does not exceed the sum of (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased, *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

SECTION 7.03 Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(1) Holdings or any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that

(a) the Borrower shall be the continuing or surviving Person,

(b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia and

(c) in the case of a merger or consolidation of Holdings with and into the Borrower,

(i) Holdings shall not be an obligor in respect of any Indebtedness that is not permitted to be Indebtedness of the Borrower under this Agreement,

(ii) Holdings shall have no direct Subsidiaries at the time of such merger or consolidation other than the Borrower,

(iii) no Event of Default exists at such time or after giving effect to such transaction and

(iv) after giving effect to such transaction, a direct parent of the Borrower will (A) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and (B) pledge 100% of the Equity Interests of the Borrower to the Administrative Agent as Collateral to secure the Obligations in form reasonably satisfactory to the Administrative Agent and the Borrower;

(2) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party,

(a) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary that is a Loan Party; *provided* that a Loan Party shall be the continuing or surviving Person;

(b) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States will be permitted; and

(c) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

provided that in the case of clause (c), the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of "Permitted Investments";

(3) any Restricted Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary; *provided* that any disposition by a Loan Party shall be to another Loan Party;

(4) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower's assets, is the transferee of such assets) (any such Person, a "**Successor Borrower**"):

(i) the Successor Borrower will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and

(C) deliver to the Administrative Agent (I) an Officer's Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Loan Document (as applicable) comply with this Agreement, (II) an updated pro forma Borrowing Base Certificate reflecting Excess Availability of at least 10% of the Borrowing Base after giving effect to such transaction and (III) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as agreed by the Administrative Agent),

(A) each Guarantor, unless it is the other party to such merger or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower's obligations under this Agreement),

(B) each Loan Party, unless it is the other party to such merger or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder,

(C) [reserved];

(iii) after giving *pro forma* effect to such incurrence, the Borrower would be permitted to incur at least $1.00 of additional Permitted Ratio Debt; and

(iv) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Borrower required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

provided further that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(5) so long as no Event of Default has occurred and is continuing or would result therefrom, Holdings may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) Holdings will be the continuing or surviving Person or (b) if:

(i) the Person formed by or surviving any such merger or consolidation is not Holdings,

(ii) Holdings is not the Person into which the applicable Person has been liquidated or

(iii) in connection with a disposition of all or substantially all of Holding's assets, the Person that is the transferee of such assets is not Holdings (any such Person described in the preceding clauses (i) through (iii), a "**Successor Holdings**"), then the Successor Holdings will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of Holdings under this Agreement and the other Loan Documents to which Holdings is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower,

(C) pledge 100% of the Equity Interests of the Borrower held by such Successor Holdings to the Administrative Agent as Collateral to secure the Obligations in accordance with the Security Agreement or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the Borrower,

(D) if requested by the Administrative Agent, deliver, or cause the Borrower to deliver, to the Administrative Agent (I) an Officer's Certificate stating that such merger or consolidation or other transaction and such supplement to this Agreement or any Collateral Document (as applicable) comply with this Agreement and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent; and

(i) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Holdings required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

provided further that if the foregoing are satisfied, the Successor Holdings will succeed to, and be substituted for, Holdings under this Agreement;

(6) any Restricted Subsidiary may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05; *provided* that solely in the case of a merger or consolidation involving a Loan Party, no Event of Default exists or would result therefrom; *provided further* that the continuing or surviving Person will be (a) the Borrower or (b) a Loan Party;

(7) a merger, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 or a disposition that does not constitute any Asset Sale (other than a transaction described in clause (b) of the definition of Asset Sale); *provided* that as a result of any such merger, dissolution, liquidation, consolidation or disposition involving a Loan Party, any assets of such Loan Party shall be disposed of to another Loan Party; and

(8) subject to complying with the Collateral and Guarantee Requirement, the Borrower, Holdings and any Restricted Subsidiary may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States and (b) change its name.

SECTION 7.04 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consummate any Asset Sale unless:

(1) the Borrower or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of and

(2) except in the case of a Permitted Asset Swap, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):

(a) any liabilities (as shown on the Borrower's or any Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower's or a Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Restricted Subsidiary);

(b) any securities, notes or other obligations or assets received by the Borrower or any Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Designated Non-Cash Consideration received by the Borrower or any Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (i) $30.0 million and (ii) 10.0% of Consolidated EBITDA of the Borrower for the most recently ended Test Period (calculated on a *pro forma* basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value; and

(d) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Borrower or a Restricted Subsidiary), to the extent that the Borrower and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale.

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing. To the extent any ABL Priority Collateral is subject to any Asset Sale comprising more than 10% of the Borrowing Base, Borrower shall provide an updated *pro forma* Borrowing Base Certificate giving effect to such Asset Sale and demonstrating that Borrower has Excess Availability of at least $20.0 million after giving effect to such Asset Sale.

SECTION 7.05 Restricted Payments.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower's or any Restricted Subsidiary's Equity Interests to any Person other than the Borrower or any Restricted Subsidiary of the Borrower (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(i) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(ii) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Restricted Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Subordinated Indebtedness, other than:

(i) Indebtedness permitted under clauses (8), (9) and (10) of Section 7.02(b); or

(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or

(D) make any Restricted Investment;

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

(1) [reserved];

(2) [reserved];

(3) [reserved];

(4)

(a) with respect to Restricted Payments, at the time such Restricted Payment is made, the Specified Restricted Payment Conditions shall be satisfied with respect thereto; provided that, neither the Borrower nor any of its Restricted Subsidiaries may make a Restricted Payment utilizing this clause (4)(a) until the first anniversary of the Closing Date; or

(b) with respect to Restricted Investments, at the time such Restricted Investment is made, the Specified Investment Payment Conditions shall be satisfied with respect thereto;

(b) The provisions of Section 7.05(a) will not prohibit:

(1) except in the case of such transactions utilizing Section 7.05(a)(4) above, the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Agreement (including this Section 7.05);

(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("**Treasury Capital Stock**") or (ii) Subordinated Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Borrower or any Parent Company (in the case of proceeds, to the extent any such proceeds therefrom are contributed to the Borrower) (in each case, other than Disqualified Stock) ("**Refunding Capital Stock**"), and (y) within 120 days of such sale or issuance,

(b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Restricted Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance, and

(c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Borrower was permitted under clause (6)(a) or (b) of this Section 7.05(b), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount *per annum* no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:

(a) Subordinated Indebtedness of the Borrower or a Subsidiary Guarantor made (i) by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Subordinated Indebtedness of the Borrower or a Subsidiary Guarantor or Disqualified Stock of the Borrower or a Subsidiary Guarantor and (ii) within 120 days of such sale, issuance or incurrence,

(b) Disqualified Stock of the Borrower or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock or Subordinated Indebtedness of the Borrower or a Subsidiary Guarantor, made within 120 days of such sale, issuance or incurrence, and

(c) Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor, made within 120 days of such sale or issuance, that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 7.02; and

(d) any Subordinated Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness.

(4) a Restricted Payment or Restricted Investment, as applicable, to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower or any Parent Company held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower or any Parent Company in connection with any such repurchase, retirement or other acquisition); *provided* that (x) with respect to a Restricted Payment or Restricted Investment, as applicable, the Specified Restricted Payment Conditions or Specified Investment Payment Conditions, as applicable, shall be satisfied with respect thereto and (y) the aggregate amount of Restricted Payments made under this clause (4) does not exceed $10.0 million in any calendar year (increasing to $20.0 million following an underwritten public Equity Offering by the Borrower or any Parent Company) with unused amounts in any calendar year being carried over to succeeding calendar years; *provided further* that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower and, to the extent contributed to the Borrower, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company, or pursuant to any Management Services Agreement, that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments or Restricted Investments by virtue of clause (3) of Section 7.05(a); *plus*

(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Restricted Subsidiaries or pursuant to any Management Services Agreement that are foregone in exchange for the receipt of Equity Interests of the Borrower pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(c) the cash proceeds of life insurance policies received by the Borrower or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Borrower (other than in the form of Disqualified Stock)) after the Closing Date; *minus*

(d) the amount of any Restricted Payments and Restricted Investments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);

provided that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; *provided further* that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any Parent Company or any Restricted Subsidiary in connection with a repurchase of Equity Interests of the Borrower or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement;

(5) [reserved];

(6) [reserved];

(7) (a) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any Restricted Subsidiary or any Parent Company,

(b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and

(c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower, any Restricted Subsidiary or any Parent Company in connection with such Person's purchase of Equity Interests of the Borrower or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Borrower's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on such company's common equity), following the first public offering of the Borrower's common equity or the common equity of any Parent Company after the Closing Date, in an amount not to exceed the sum of (a) 6.00% per annum of the net cash proceeds received by or contributed to the Borrower in or from any such public offering, other than public offerings with respect to the Borrower's or such Parent Company's common equity registered on Form S-4 or Form S-8 and other than any public sale constituting an Excluded Contribution or CapEx Equity and (b) an aggregate amount *per annum* not to exceed 6.0% of Market Capitalization; *provided* that the Specified Restricted Payment Conditions shall be satisfied with respect thereto;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments or Restricted Investments in an aggregate amount taken together with all other Restricted Payments and Restricted Investments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is made) the greater of (a) $15.0 million and (b) 10.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis); *provided* that with respect to a Restricted Payment or Restricted Investment, as applicable, the Specified Restricted Payment Conditions or Specified Investment Payment Conditions, as applicable, shall be satisfied with respect thereto;

(11) [reserved];

(12) [reserved];

(13) [reserved];

(14) the declaration and payment of dividends or distributions by the Borrower or any Restricted Subsidiary to, or the making of loans or advances to, the Borrower or any Parent Company in amounts required for any Parent Company to pay in each case without duplication:

(a) franchise, excise and similar taxes, and other fees and expenses, required to maintain their corporate or other legal existence;

(b) (i) for any taxable period (or portion thereof) for which the Borrower or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a "**Tax Group**"), the portion of any U.S. federal, foreign, state or local income Taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Borrower and /or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries); *provided* that for each taxable period, (A) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Borrower and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group and (B) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Borrower or any Restricted Subsidiary for such purpose, or (ii) for any taxable period (or portion thereof) for which the Borrower and any Parent Company is a partnership or disregarded entity for U.S. federal income tax purposes, cash distributions ("**Tax Distributions**") to each direct or indirect member of the Parent Company in accordance with the terms of its relevant operating agreement, in an aggregate amount not to exceed the product of (A) the taxable income of the Borrower allocable to such member for such period reduced by any taxable loss of the Borrower allocated to such member with respect to any prior taxable periods (or portions thereof) ending after the Closing Date (*provided* that any such taxable loss will be taken into account only to the extent that (I) such taxable loss was not previously taken into account in determining the amount of any Tax Distributions pursuant to this clause (b), (II) such taxable loss would be deductible if such loss had been incurred in the current taxable period, and (III) such taxable loss would actually reduce the tax liability of such member for such taxable period, taking into account any alternative minimum tax consequences as well as the character of the taxable loss and of the Borrower's and its Subsidiaries' income, and assuming for the purposes of this subclause (III) that such member, for all tax years (or portions thereof) ending after the Closing Date, has been a taxable corporation that has held no assets other than such member's direct or indirect interest in the Borrower or Parent Company), in each case, determined by taking into account any basis step-up in the assets of the Borrower or any of its Subsidiaries (including any step-up attributable to such member under section 743 of the Code), and (B) the maximum combined effective tax rate applicable to any direct or indirect equity owner of the Borrower or Parent Company for such taxable period (taking into account the character of the taxable income in question (e.g. long-term capital gain, qualified dividend income, etc.) and the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitations thereon)); *provided* that the amount of any Tax Distribution permitted under this clause (b) shall be reduced by the amount of any income taxes that are paid directly by the Borrower and attributable to such member;

(c) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management, consultants and independent contractors of any Parent Company, and any payroll, social security or similar taxes thereof;

(d) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company;

(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(f) amounts that would be permitted to be paid directly by the Borrower or its Restricted Subsidiaries under Section 7.07(b) (other than clause 2(a) thereof);

(g) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 7.05 if made by the Borrower; *provided* that:

(i) such Restricted Payment must be made within 120 days of the closing of such Investment, acquisition or investment,

(ii) such Parent Company must, promptly following the closing thereof, cause (A) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Borrower or a Restricted Subsidiary or (B) the merger, amalgamation, consolidation or sale of the Person formed or acquired into the Borrower or a Restricted Subsidiary (to the extent not prohibited by Section 7.03) in order to consummate such Investment, acquisition or investment,

(iii) such Parent Company and its Affiliates (other than the Borrower or any Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Borrower or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Agreement,

(iv) any property received by the Borrower may not increase amounts available for Restricted Payments pursuant to clause (3) of Section 7.05(a), and

(v) to the extent constituting an Investment, such Investment will be deemed to be made by the Borrower or such Restricted Subsidiary pursuant to another provision of this Section 7.05 (other than pursuant to clause (9) of this Section 7.05(b)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);

(15) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents);

(16) cash payments, or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Borrower, any Restricted Subsidiary or any Parent Company;

(17) [reserved];

(18) payments made for the benefit of the Borrower or any Restricted Subsidiary to the extent such payments could have been made by the Borrower or any Restricted Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.07;

(19) payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement;

(20) the payment of dividends, other distributions and other amounts by the Borrower to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest or principal (including AHYDO Payments) on Indebtedness, the proceeds of which have been permanently contributed to the Borrower or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Borrower or any Restricted Subsidiary incurred in accordance with this Agreement; *provided* that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Borrower for the incurrence of such Indebtedness;

(21) the making of cash payments in connection with any conversion of Convertible Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate amount since the Closing Date not to exceed the sum of (a) the principal amount of such Convertible Indebtedness *plus* (b) any payments received by the Borrower or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(22) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Borrower's common equity upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common equity upon any early termination thereof; and

(23) the refinancing of any Subordinated Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness;

provided that at the time of, and after giving effect to, any Restricted Payment or Restricted Investment pursuant to clauses (6)(b) and (10) in respect of Restricted Payments and Restricted Investments described in clauses (A), (B) or (C) of the definition thereof, no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 7.05, in the event that any Restricted Payment or Investment (or any portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in Section 7.05(a), clauses (1) through (23) of Section 7.05(b) or one or more of the clauses contained in the definition of "Permitted Investments," the Borrower will be entitled to divide or classify (or later divide, classify or reclassify), in whole or in part, in its sole discretion, such Restricted Payment or Investment (or any portion thereof) among Section 7.05(a), such clauses (1) through (23) of Section 7.05(b) or one or more clauses contained in the definition of "Permitted Investments," in any manner that otherwise complies with this Section 7.05.

The amount of all Restricted Payments and Restricted Investments (other than cash) will be the fair market value on the date the Restricted Payment or Restricted Investment is made, or at the Borrower's election, the date a commitment is made to make such Restricted Payment or Restricted Investment, of the assets or securities proposed to be transferred or issued by the Borrower or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment or Restricted Investment.

For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement.

SECTION 7.06 Change in Nature of Business. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date.

SECTION 7.07 Transactions with Affiliates.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an "**Affiliate Transaction**") involving aggregate payments or consideration in excess of $25.0 million, unless (A) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate of the Borrower on an arm's-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view, and (B) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of $50.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (A) above.

(b) The foregoing restriction will not apply to the following:

(1) (a) transactions between or among the Borrower and one or more Subsidiary Guarantors or between or among Subsidiary Guarantors or, in any case, any entity that becomes a Subsidiary Guarantor as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower and any Parent Company; *provided* that such merger, consolidation or amalgamation of the Borrower is otherwise in compliance with the terms of this Agreement and effected for a *bona fide* business purpose;

(2) (a) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition), (b) any Permitted Investment(s) or any acquisition otherwise permitted hereunder and (c) Indebtedness permitted by Section 7.02;

(3) (a) the payment of management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreements (including any unpaid management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreements, and

(b) the payment of indemnification and similar amounts to, and reimbursement of expenses of, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors;

(4) any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any present, future or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company that are, in each case, approved by the Borrower in good faith; and the provision of reasonable and customary compensation and other benefits (including the payment of any fees and compensation, benefit plan or arrangement, any health, disability or similar insurance plan), indemnities and reimbursements of expenses and employment and severance arrangements to, or on behalf of, or for the benefit of such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any Parent Company;

(5) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Borrower, any of its Subsidiaries or any Parent Company, or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice;

(6) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower on an arm's-length basis;

(7) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the applicable agreement as in effect on the Closing Date);

(8) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will only be permitted by this clause (8) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the original agreement or arrangement in effect on the Closing Date;

(9) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(10) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(11) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;

(12) [reserved];

(13) payments by the Borrower or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;

(14) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and repurchase and cancellation of any thereof) of the Borrower, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith;

(15) (a) investments by Affiliates in securities or Indebtedness of the Borrower or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Borrower or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;

(16) [reserved];

(17) payments by the Borrower (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Borrower (and any Parent Company) and its Subsidiaries; *provided* that in each case the amount of such payments by the Borrower and its Subsidiaries are permitted under Section 7.05(b)(14);

(18) any lease or sublease entered into between the Borrower or any Restricted Subsidiary, as lessee or sublessee and any Affiliate of the Borrower, as lessor or sublessor, and any transaction(s) pursuant to that lease, which lease or sublease is approved by the Board of Directors or senior management of the Borrower in good faith;

(19) (a) intellectual property licenses in the ordinary course of business or consistent with industry practice and (b) intercompany intellectual property licenses and research and development agreements;

(20) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower or any Parent Company pursuant to any equity holders agreement or registration rights agreement entered into on or after the Closing Date;

(21) transactions permitted by, and complying with, Section 7.03 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of any Parent Company, (b) forming a holding company or (c) reincorporating the Borrower in a new jurisdiction;

(22) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not (a) result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole or (b) result in any Loan Party becoming a non-Loan Party, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate;

(23) (a) transactions with a Person that is an Affiliate of the Borrower (other than an Unrestricted Subsidiary) solely because the Borrower or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower, any Restricted Subsidiary or any Parent Company;

(24) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or a Parent Company;

(25) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;

(26) investments by any Investor or Parent Company in securities or Indebtedness of the Borrower or any Subsidiary Guarantor;

(27) payments in respect of (a) the Obligations (or any Credit Agreement Refinancing Indebtedness), (b) the Senior Secured Notes or (c) other Indebtedness, Disqualified Stock or Preferred Stock of the Borrower and its Subsidiaries held by Affiliates; *provided* that such Obligations were acquired by an Affiliate of the Borrower in compliance herewith;

(28) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and

(29) any transaction on arm's length terms with a non-Affiliate that becomes an Affiliate as a result of such transaction.

SECTION 7.08 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Subsidiary Guarantor) to:

(1) (a) pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary that is a Subsidiary Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(b) pay any Indebtedness owed to the Borrower or to any Restricted Subsidiary that is a Subsidiary Guarantor;

(2) make loans or advances to the Borrower or to any Restricted Subsidiary that is a Subsidiary Guarantor;

(3) sell, lease or transfer any of its properties or assets to the Borrower or to any Restricted Subsidiary that is a Subsidiary Guarantor; or

(4) with respect to the Borrower or any Subsidiary Guarantor, (a) Guaranty the Obligations or (b) create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Lenders with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents;

provided that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.08(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(a) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents, the Term Facility and any Hedge Agreements, Hedging Obligations and the related documentation;

(b) the Senior Secured Notes Indenture, the Senior Secured Notes and the guarantees thereof;

(c) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in Section 7.08(a)(3) and Section 7.08(a)(4)(b) on the property so acquired;

(d) applicable Law or any applicable rule, regulation or order;

(e) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries;

(f) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(g) [reserved];

(h) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Permitted Liens;

(i) provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Subsidiary Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 7.02;

(j) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business;

(k) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to intellectual property and other agreements;

(l) [reserved];

(m) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(n) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary;

(o) customary provisions restricting assignment of any agreement;

(p) restrictions arising in connection with cash or other deposits permitted under Section 7.01;

(q) any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to the Borrower or any Restricted Subsidiary than (A) the restrictions contained in the Loan Documents, the ABL Documents, the Senior Secured Notes Indenture and the Senior Secured Notes as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to the Borrower or that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Borrower's ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;

(r) (i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 7.02(b)(5) and any permitted refinancing in respect of the foregoing and (ii) agreements entered into in connection with any Sale-Leaseback Transaction entered into in the ordinary course of business or consistent with industry practice or a Specified Sale-Leaseback Transaction;

(s) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.08;

(t) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; *provided* that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Borrower or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;

(u) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (t) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(v) any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(w) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 7.02 is incurred; and

(x) restrictions on the sale, lease or transfer of property or assets arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Borrower or any Restricted Subsidiary in any manner material to the Borrower and the Restricted Subsidiaries, taken as a whole.

SECTION 7.09 Accounting Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any change in fiscal year; *provided*, *however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 7.10 Modification of Terms of Indebtedness. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Subordinated Indebtedness having an aggregate outstanding principal amount greater than the Threshold Amount (other than as a result of any Refinancing Indebtedness in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed). The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify, change or enter into any Indebtedness that is subject to the Intercreditor Agreement that would result in all the Obligations not being permitted under the terms of such Indebtedness.

SECTION 7.11 Holdings.

(1) Holdings shall not engage in any material operating or business activities; *provided* that the following and any activities incidental thereto shall be permitted in any event:

(i) its ownership of the Equity Interests of the Borrower and its other Subsidiaries, including receipt and payment of Restricted Payments and other amounts in respect of Equity Interests,

(ii) the maintenance of its legal existence (including the ability to incur and pay, as applicable, fees, costs and expenses and taxes relating to such maintenance),

(iii) the performance of its obligations with respect to the Loan Documents, the ABL Documents, the Senior Secured Notes and the Senior Secured Notes Indenture, and any other Pari Passu Lien Debt or equipment or commercial building financings,

(iv) any public offering of its common equity or any other issuance, registration or sale of its Equity Interests,

(v) financing activities, including the issuance of securities, incurrence of debt, receipt and payment of dividends and distributions, making contributions to the capital of its Subsidiaries and guaranteeing the obligations of the Borrower and its other Subsidiaries,

(vi) if applicable, participating in tax, accounting and other administrative matters as a member of the consolidated group and the provision of administrative and advisory services (including treasury and insurance services) to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries,

(vii) holding any cash or property received in connection with Restricted Payments made by the Borrower in accordance with Section 7.05 pending distribution thereof to the applicable Parent Company (but not operate any property),

(viii) providing indemnification to officers and directors,

(ix) conducting, transacting or otherwise engaging in any business or operations of the type that it conducts, transacts or engages in on the Closing Date,

(x) any transaction that Holdings is permitted to enter into or consummate under the Loan Documents, the Term Documents, the Senior Secured Notes Indenture, other Pari Passu Lien Obligations or equipment financings and any transaction between Holdings and the Borrower or any Restricted Subsidiary permitted under the Loan Documents, the Term Documents, the Senior Secured Notes Indenture, other Pari Passu Lien Obligations or equipment or commercial building financings,

(xi) merging, amalgamating or consolidating with or into any Person (in compliance with Section 7.03),

(xii) repurchases of Indebtedness through open market purchases and Dutch auctions,

(xiii) activities incidental to Permitted Acquisitions or similar Investments consummated by the Borrower and the Restricted Subsidiaries, including the formation of acquisition vehicle entities and intercompany loans and/or Investments incidental to such Permitted Acquisitions or similar Investments,

(xiv) any transaction with the Borrower and/or any Restricted Subsidiary to the extent expressly permitted under this Section 7,

(xv) subject to the requirements of Section 7.11(2), its ownership of the Act 9 Bonds, and

(xvi) any activities incidental or reasonably related to the foregoing.

provided that, notwithstanding the foregoing, Holdings shall not create or acquire (by way of amalgamation, merger, consolidation or otherwise) any material direct Subsidiaries, other than the Borrower or any holding company for the Borrower.

(2) Neither Holdings, as owner of the Act 9 Bonds, nor any agent or designee of Holdings (including Regions Bank as trustee under the Act 9 Trust Indenture), shall, without the prior written consent of the Collateral Agent (acting at the direction of the Administrative Agent):

(i) dispose of any Act 9 Bonds or its economic interests therein;

(ii) enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff) under the Act 9 Bond Documents (including the enforcement of any right under any other agreement or arrangement to which Holdings or its agent or designee and either Osceola or the Borrower is a party), or

(iii) commence or join with any Person (other than the Secured Parties) in commencing, or petition for or vote in favor of, any action or proceeding with respect to such rights or remedies (including in any foreclosure action or any proceeding under any Debtor Relief Law).

SECTION 7.12 Financial Covenant. During any period (each, a "**Covenant Period**") (a) commencing on any date on which Excess Availability is less than the greater of (i) 10% of the Line Cap and (ii) $13,000,000 at any time and (b) ending on the date on which Excess Availability shall have been greater than the greater of (i) 10% of the Line Cap and (ii) $13,000,000 for 20 consecutive calendar days (measured from, with respect to the Borrowing Base, the first Borrowing Base Reporting Date with respect to which Excess Availability exceeded the greater of 10.0% of the Line Cap and $ 13,000,000), the Borrower shall not permit the Fixed Charge Coverage Ratio to be less than 1.00 to 1.00 (such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent pursuant to Section 6.01(1) and Section 6.01(2) for such Test Period) (the "**Financial Covenant**").

Article VIII

Events of Default and Remedies

SECTION 8.01 Events of Default. Each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an "**Event of Default**":

(1) Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit or any Cash Collateralization required pursuant to Section 2.03 or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(2) Specific Covenants. The Borrower, any Subsidiary Guarantor or, in the case of Section 7.11, Holdings, fails to perform or observe any term, covenant or agreement contained in any of Section 6.01(6), 6.03(1), 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04), 6.07, 6.16, 6.17, 6.18 or Article VII;

provided that the Borrower's failure to comply with the Financial Covenant is subject to cure pursuant to Section 8.04; or

(3) Other Defaults. The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; *provided* that, solely with respect to any default that (x) was not the result of any action or inaction by the Borrower or any Subsidiary Guarantor that is intended to avoid compliance with the Loan Documents while knowing that such action or inaction would result in a default and (y) is capable of cure, such thirty (30) day period shall be extended for up to an additional thirty (30) days so long as the Borrower and any applicable Subsidiary Guarantor are diligently pursuing a cure for such default; or

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

(5) Cross-Default. The Borrower or any Restricted Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower or any Restricted Subsidiary), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem all of such Indebtedness to be made, prior to its stated maturity; *provided* that (A) such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02 and (B) this clause (5)(b) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(6) Insolvency Proceedings, etc. The Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(7) Judgments. There is entered against the Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, a final non-appealable judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not paid or covered by insurance or indemnities as to which the insurer or indemnity has been notified of such judgment or order and the applicable insurance company or indemnity has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(8) ERISA. (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (b) the Borrower or any Subsidiary Guarantor or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan, or (c) with respect to a Foreign Plan, a termination, withdrawal or noncompliance with applicable Law or plan terms occurs, except, as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery and for any reason (other than (a) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions) ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than (i) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04) or (ii) as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions; or

(10) Collateral Documents. Any Collateral Document with respect to a material portion of the Collateral after delivery thereof pursuant to Section 4.01, 6.11, 6.13 or pursuant to the provisions of any Collateral Document for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, or any Lien purported to be created by any Collateral Document with respect to a material portion of the Collateral shall be asserted in writing by any Loan Party (prior to the satisfaction of the Termination Conditions) not to be, a valid and perfected Lien with the priority required by such Collateral Document (or other security purported to be created on the applicable Collateral) on, and security interest in, any material portion of the Collateral purported to be covered thereby, subject to Permitted Liens, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents; or

(11) Change of Control. There occurs any Change of Control.

SECTION 8.02 Remedies upon Event of Default. Subject to Section 8.04, if any Event of Default occurs and is continuing, the Administrative Agent may with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

(1) declare the Commitments of each Lender to be terminated, whereupon such Commitments and obligation will be terminated;

(2) declare the obligation of the Issuing Bank to issue any Letter of Credit to be terminated, whereupon such obligations will be terminated;

(3) declare the unpaid principal amount of all outstanding Loans and the amount of the unreimbursed drawings under Letters of Credit, all interest accrued and unpaid thereon, and all other amounts owing or payable under any Loan Document to be due and payable, whereupon such amounts shall be due and payable;

(4) declare that an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (regardless of whether any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letters of Credit) to be due and payable, whereupon such amount shall be due and payable;

(5) direct Borrower to Cash Collateralize (and Borrower hereby agrees upon receipt of such notice, or upon the occurrence of any Event of Default specified in Section 8.01(6) to Cash Collateralize) Letters of Credit in an amount not less than the Minimum Collateral Amount; and

(6) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**"), the Commitments of each Lender will automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid will automatically become due and payable, in each case without further act of the Administrative Agent or any Lender; *provided* further that the foregoing shall not effect in any way the obligations of Lenders under Section 2.02(2)(v) or Section 2.03(5).

SECTION 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), subject to the ABL Intercreditor Agreement, any amounts received on account of the Obligations will be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, all Obligations in respect of Letters of Credit (including reimbursements for draws and Cash Collateralization of the remaining Letters of Credit), the Designated Pari Hedge Obligations (up to the amount of the Designated Pari Hedge Reserves then in effect with respect thereto) and the Designated Pari Cash Management Services Obligations (up to the amount of the Designated Pari Cash Management Services Reserve then in effect with respect thereto), ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party, but appropriate adjustments shall be made with respect to payments from the other Loan Parties on account of their assets to preserve the allocation to the Obligations set forth above.

SECTION 8.04 Right to Cure.

(1) Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02, but subject to Sections 8.04(2) and (3), for the purpose of determining whether an Event of Default under the Financial Covenant has occurred, the Borrower may on one or more occasions designate any portion of the Net Proceeds from any Permitted Equity Issuance or of any contribution to the common equity capital of the Borrower (or from any other contribution to capital or sale or issuance of any other Equity Interests on terms reasonably satisfactory to the Administrative Agent), but excluding any proceeds of CapEx Equity and any proceeds of Qualified Capital Contributions that are used to make cash payments of interest and principal in respect of the Specified Pari Passu Debt Documents (the "**Cure Amount**") as an increase to Consolidated EBITDA of the Borrower for the applicable fiscal quarter; *provided* that

(a) such amounts to be designated are actually received by the Borrower (i) on and after the first Business Day following the most recently ended fiscal quarter and (ii) on and prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the "**Cure Expiration Date**"),

(b) such amounts to be designated do not exceed the maximum aggregate amount necessary to cure any Event of Default under the Financial Covenant as of such date and

(c) the Borrower will have provided notice to the Administrative Agent on the date such amounts are designated as a "Cure Amount" (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such Net Proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under the Financial Covenant is less than the full amount of such originally designated amount).

The Cure Amount used to calculate Consolidated EBITDA for one fiscal quarter will be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter. The parties hereby acknowledge that this Section 8.04(1) may not be relied on for purposes of calculating any financial ratios other than as applicable to the Financial Covenant (and may not be included for purposes of determining pricing, mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) and may not result in any adjustment to any amounts (including the amount of Indebtedness) or increase in cash with respect to the fiscal quarter with respect to which such Cure Amount was received other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence. Notwithstanding anything to the contrary contained in Section 8.01 and Section 8.02, (A) upon designation of the Cure Amount by the Borrower in an amount necessary to cure any Event of Default under the Financial Covenant, the Financial Covenant will be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the Financial Covenant and any Event of Default under the Financial Covenant (and any other Default as a result thereof) will be deemed not to have occurred for purposes of the Loan Documents and (B) from and after the date that the Borrower delivers a written notice to the Administrative Agent that it intends to exercise its cure right under this Section 8.04 (a "**Notice of Intent to Cure**") neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under the Financial Covenant (and any other Default as a result thereof) until and unless the Cure Expiration Date has occurred without the Cure Amount having been designated; *provided*, that no Lenders or Issuing Banks shall be required to honor any proposed Credit Extension until and unless there has occurred a designation of the Cure Amount by the Borrower in an amount necessary to cure any Event of Default under the Financial Covenant.

(2) In each period of four consecutive fiscal quarters, there shall be no more than two (2) fiscal quarters in which the cure right set forth in Section 8.04(1) is exercised.

(3) There shall be no more than five (5) fiscal quarters in which the cure rights set forth in Section 8.04(1) are exercised during the term of the Facility.

Article IX

Administrative Agent and Other Agents

SECTION 9.01 Appointment and Authorization of the Administrative Agent and Collateral Agent. Each Lender hereby irrevocably appoints Goldman Sachs Bank USA, to act on its behalf as the Administrative Agent and Collateral Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.07, 9.11, 9.12, 9.15 and 9.16) are solely for the benefit of the Agents and the Lenders, and the Borrower shall not have rights as a third-party beneficiary of any such provision.

SECTION 9.02 Rights as a Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its Loans and participations in the Letters of Credit, Swing Line Loans and Protective Advances, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Lender" shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Holdings or any of its Subsidiaries or Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

SECTION 9.03 Exculpatory Provisions. No Agent (which term shall for the purposes of this Section 9.03 include Issuing Bank) shall have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, each Agent (including the Administrative Agent):

(1) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent or Arrangers is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(2) 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 Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(3) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate (including any Borrowing Base Certificate), report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, 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. The duties of the Administrative Agent and Collateral Agent shall be mechanical and administrative in nature; the Administrative Agent and Collateral Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent or the Collateral Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Usage or the component amounts thereof, the Borrowing Base or the component amounts thereof, or calculation of Quarterly Average Excess Availability or Quarterly Average Facility Utilization or the terms and conditions of the ABL Intercreditor Agreement, or any amendment, supplement or other modification thereof, or qualification of (or lapse of qualification of) any Account or Inventory under the eligibility criteria set forth herein, or determination of whether the Specified Investment Payment Conditions or Specified Restricted Payment Conditions have been satisfied or the calculations of the outstanding amount of any Designated Cash Management Services Obligations, Designated Pari Cash Management Services Obligations, Designated Hedge Obligations and Designated Pari Hedge Obligations and, in the case of any Designated Pari Cash Management Services Obligations or Designated Pari Hedge Obligations, whether the amount thereof is greater or less than the amount of any related Designated Pari Cash Management Services Reserve or Designated Pari Hedge Reserve (it being further agreed that, in determining the amount of any Designated Pari Cash Management Services Reserve, any Designated Pari Hedge Reserve or any other Reserve, the Administrative Agent shall be entitled to rely, and shall be fully protected in relying, on the calculation of Designated Cash Management Services Obligations, Designated Pari Cash Management Services Obligations, Designated Hedge Obligations and Designated Pari Hedge Obligations as set forth in any Borrowing Base Certificate or as otherwise provided to the Administrative Agent by or on behalf of the Borrower or any other Loan Party).

Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, each Arrangers is named as such for recognition purposes only, and in its capacity as such shall have no powers, duties, responsibilities or liabilities with respect to this Agreement or the other Loan Documents or the transactions contemplated hereby and thereby; it being understood and agreed that each Arrangers shall be entitled to all indemnification and reimbursement rights in favor of the Arrangers as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, each Arrangers shall not, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

SECTION 9.04 Lack of Reliance on the Administrative Agent. Independently and without reliance upon the Administrative Agent or the Issuing Bank, as applicable, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of Holdings, the Borrower and the Restricted Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of Holdings, the Borrower and the Restricted Subsidiaries and, except as expressly provided in this Agreement, neither the Administrative Agent nor the Issuing Bank shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of any Loan or the issuance of any Letter of Credit at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein or in any document, certificate (including any Borrowing Base Certificate) or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of Holdings, the Borrower or any of the Restricted Subsidiaries or the existence or possible existence of any Default or Event of Default.

SECTION 9.05 Certain Rights of the Agents. If any Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, such Agent shall be entitled to refrain from such act or taking such action unless and until such Agent shall have received instructions from the Required Lenders; and such Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against such Agent as a result of such Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders.

SECTION 9.06 Reliance by the Agents. Each Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that such Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. 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 9.07 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub-agents appointed by such Agent. Each 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 Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub agent and to the Agent-Related Persons of such 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 Agent. Notwithstanding anything to the contrary in this Section 9.07 or Section 9.15, the Administrative Agent shall not delegate to any Supplemental Administrative Agent responsibility for receiving any payments under any Loan Document for the account of any Lender, which payments shall be received directly by the Administrative Agent, without prior written consent of the Borrower (not to unreasonably withheld or delayed).

SECTION 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent or the Collateral Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent, Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent or the Collateral Agent) in proportion to their respective Pro Rata Shares for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent, the Collateral Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent or the Collateral Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; *provided* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's, the Collateral Agent's or any other Agent-Related Person's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent or the Collateral Agent, as applicable, upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent or the Collateral Agent, as applicable, 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 the Administrative Agent or the Collateral Agent is not reimbursed for such expenses by or on behalf of the Borrower, *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, *provided further* that the failure of any Lender to indemnify or reimburse the Administrative Agent or the Collateral Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent or the Collateral Agent, as applicable.

SECTION 9.09 The Administrative Agent in Its Individual Capacity. With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

SECTION 9.10 [Reserved].

SECTION 9.11 Successor Administrative Agent, Collateral Agent and Swing Line Lender.

(1) Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders, Issuing Bank and Borrower. Administrative Agent shall have the right to appoint a financial institution to act as Administrative Agent and/or Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower and Required Lenders, and Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by Borrower and Required Lenders or (iii) such other date, if any, agreed to by Required Lenders. Upon any such notice of resignation or any such removal, if a successor Administrative Agent has not already been appointed by the retiring Administrative Agent, Required Lenders shall have the right, upon five Business Days' notice to Borrower and Issuing Bank, to appoint a successor Administrative Agent. If neither Required Lenders nor Administrative Agent have appointed a successor Administrative Agent, Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that, until a successor Administrative Agent is so appointed by Required Lenders or Administrative Agent, any collateral security held by Administrative Agent in its role as Collateral Agent on behalf of the Lenders or Issuing Bank under any of the Loan Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Administrative Agent and the retiring or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Loan Documents, and (ii) execute and deliver to such successor Administrative Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Administrative Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder. Except as provided above, any resignation or removal of Goldman Sachs or its successor as Administrative Agent pursuant to this Section 9.11 shall also constitute the resignation or removal of Goldman Sachs or its successor as Collateral Agent. After any retiring or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder. Any successor Administrative Agent appointed pursuant to this Section 9.11 shall, upon its acceptance of such appointment, become the successor Collateral Agent for all purposes hereunder.

(2) In addition to the foregoing, Collateral Agent may resign at any time by giving prior written notice thereof to Lenders, Issuing Bank and the Grantors. Administrative Agent shall have the right to appoint a financial institution as Collateral Agent hereunder, subject to the reasonable satisfaction of Borrower and the Required Lenders and Collateral Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation, (ii) the acceptance of such successor Collateral Agent by Borrower and the Required Lenders or (iii) such other date, if any, agreed to by the Required Lenders. Upon any such notice of resignation or any such removal, Required Lenders shall have the right, upon five Business Days' notice to Administrative Agent, to appoint a successor Collateral Agent. Until a successor Collateral Agent is so appointed by Required Lenders or Administrative Agent, any collateral security held by Collateral Agent on behalf of the Lenders or Issuing Bank under any of the Loan Documents shall continue to be held by the retiring Collateral Agent as nominee until such time as a successor Collateral Agent is appointed. Upon the acceptance of any appointment as Collateral Agent hereunder by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Collateral Agent under this Agreement and the Collateral Documents, and the retiring or removed Collateral Agent under this Agreement shall promptly (i) transfer to such successor Collateral Agent all sums, Securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Collateral Agent under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor Collateral Agent or otherwise authorize the filing of such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Collateral Agent of the security interests created under the Collateral Documents, whereupon such retiring or removed Collateral Agent shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any retiring or removed Collateral Agent's resignation or removal hereunder as the Collateral Agent, the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was the Collateral Agent hereunder.

(3) Any resignation of Goldman Sachs or its successor as Administrative Agent pursuant to this Section 9.11 shall also constitute the resignation or removal of Goldman Sachs or its successor as Swing Line Lender and Issuing Bank, and any successor Administrative Agent appointed pursuant to this Section 9.11 shall, upon its acceptance of such appointment, become the successor Swing Line Lender and Issuing Bank for all purposes hereunder. In such event (a) Borrower shall prepay any outstanding Swing Line Loans made, and Cash Collateralize any Letters of Credit issued in an amount not less than the Minimum Collateral Amount, by the resigning or removed Administrative Agent in its capacity as Swing Line Lender and Issuing Bank, as applicable, (b) upon such prepayment, the resigning or removed Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to Borrower for cancellation, and (c) Borrower shall issue, if so requested by successor Administrative Agent and Swing Line Lender, a new Swing Line Note to the successor Administrative Agent and Swing Line Lender, in the principal amount of the Swing Line Sublimit then in effect and with other appropriate insertions.

SECTION 9.12 Collateral Matters.

(1) Agents under Collateral Documents and Guaranty. Each Secured Party hereby further authorizes Administrative Agent or Collateral Agent, as applicable, on behalf of and for the benefit of Secured Parties, to be the agent for and representative of Secured Parties with respect to the Guaranty, the Intercreditor Agreements, the Collateral and the Collateral Documents; provided that neither Administrative Agent nor Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Designated Hedge Agreements or any Designated Cash Management Services Agreement. Subject to Section 10.01, without further written consent or authorization from any Secured Party, Administrative Agent or Collateral Agent, as applicable may execute any documents or instruments necessary to (i) in connection with a disposition of assets permitted by this Agreement or Lien permitted under Section 7.01, release and/or subordinate any Lien encumbering any item of Collateral that is the subject of such disposition of assets and/or permitted Lien or to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Sections 7.03 and 7.04 or with respect to which Required Lenders (or such other Lenders as may be required to give such consent under Section 10.01) have otherwise consented.

(2) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, Administrative Agent, Collateral Agent and each Secured Party hereby agree that no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by Administrative Agent or Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof.

(3) Rights under Hedge Agreements. No Designated Hedge Agreement or Designated Cash Management Services Agreement or any agreement or instrument executed pursuant thereto, or of any other guarantee or security for the Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Designated Hedge Agreement, such Designated Cash Management Services Agreement or any agreement relating to such other guarantee or security, will create (or be deemed to create) in favor of any Lender Counterparty that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Loan Documents except as expressly provided in Section 10.01(2)(ix) of this Agreement. By accepting the benefits of the Collateral, such Lender Counterparty shall be deemed to have appointed Collateral Agent as its agent and agreed to be bound by the Loan Documents as a Secured Party, subject to the limitations set forth in this clause (3).

(4) Release of Collateral and Guarantees, Termination of Loan Documents. Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than obligations in respect of any Designated Hedge Agreements or any Designated Cash Management Services Agreement) have been paid in full, all Commitments have terminated or expired, no Letter of Credit shall be outstanding (or, if outstanding, has been Cash Collateralized in the Minimum Collateral Amount or otherwise backstopped by a letter of credit to the satisfaction of the Issuing Bank) and all Designated Hedge Obligations have been terminated and paid in full in cash (or collateralized on term satisfactory to the applicable Lender Counterparty) (such conditions, the "**Termination Conditions**"), upon request of Borrower, Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Designated Hedge Agreement or any Designated Cash Management Services Agreement or any agreement or instrument executed pursuant thereto, or of any other guarantee or security for the Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Designated Hedge Agreement, such Designated Cash Management Services Agreement or any agreement relating to such other guarantee or security) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Loan Document, whether or not on the date of such release there may be outstanding Designated Hedge Obligations or Designated Cash Management Services Obligations. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(5) The Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 9.13 [Reserved].

SECTION 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Obligation under a Letter of Credit 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, by intervention in such proceeding or otherwise:

(1) 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 and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(2) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative 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 clauses (a) through (i) of the first proviso to Section 10.01(1) of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by 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 Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that 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 Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such 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 Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

SECTION 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "**Supplemental Administrative Agent**" and collectively as "**Supplemental Administrative Agents**").

(2) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

SECTION 9.16 Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into each Intercreditor Agreement, and the parties hereto acknowledge that each such Intercreditor Agreement is binding upon them. Each Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements, (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Intercreditor Agreements and to subject the Liens on the Collateral securing the Obligations to the provisions thereof and (c) without any further consent of the Lenders, hereby authorizes and instructs the Administrative Agent and the Collateral Agent to negotiate, execute and deliver on behalf of the Secured Parties any amendment (or amendment and restatement) to the Collateral Documents or any Intercreditor Agreement contemplated hereunder. In addition, each Secured Party hereby authorizes the Administrative Agent and the Collateral Agent to enter into (i) any amendments to any Intercreditor Agreements, and (ii) any other intercreditor arrangements, in the case of clauses (i) and (ii) to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required or permitted by this Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

SECTION 9.17 Designated Pari Hedge Agreements and Designated Pari Cash Management Services Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Lender Counterparty that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Designated Pari Hedge Agreements or Designated Pari Cash Management Services Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Lender Counterparty.

SECTION 9.18 Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Article X

Miscellaneous

SECTION 10.01 Amendments, etc.

(1) Required Lenders' Consent. Subject to the additional requirements of Sections 10.01(2) and 10.01(3) and subject to Section 2.15 in respect of New Revolving Loan Commitments, no amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of Required Lenders.

(2) Affected Lenders' Consent. Without the written consent of each Lender that would be directly affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) reduce the rate of interest on any Loan or any fee payable hereunder (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.08 or any change in the definition, or in any components of, the terms "Quarterly Average Facility Utilization" or "Quarterly Average Excess Availability"), or waive or postpone the time for payment of any such interest or fee;

(iv) extend the time for payment of any such interest or fees;

(v) reduce the principal amount of any Loan or any reimbursement obligation in respect of any Letter of Credit;

(vi) amend, modify, terminate or waive any provision of this Section 10.01(2), Section 10.01(3) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(vii) amend the definition of "Required Lenders", "Supermajority Lenders" or "Pro Rata Share"; provided, with the consent of Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Required Lenders", "Supermajority Lenders" or "Pro Rata Share" on substantially the same basis as Revolving Commitments and the Revolving Loans are included on the Closing Date;

(viii) discharge any Loan Party from its respective payment Obligations under the Loan Documents, or release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guaranty 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 otherwise of the Bankruptcy Code or other disposition of assets in connection with an enforcement action with respect to the Collateral permitted pursuant to the Loan Documents (in which case only the consent of the Required Lenders will be needed for such release);

(ix) waive, amend or otherwise modify this Agreement or any provision of the Security Agreement so as to alter the ratable treatment of Obligations arising under the Loan Documents, on the one hand, and the Designated Pari Hedge Obligations or the Designated Pari Cash Management Services Obligations, on the other, or amend or otherwise modify the definition of the term "Obligations", "Designated Hedge Obligations", "Designated Cash Management Services Obligations", "Designated Pari Hedge Obligations", "Designated Pari Cash Management Services Obligations" or "Secured Parties" (or any comparable term used in any Collateral Document), in each case in a manner adverse to any Secured Party holding Designated Hedge Obligations, Designated Cash Management Services Obligations, Designated Pari Hedge Obligations or Designated Pari Cash Management Services Obligations then outstanding without the written consent of such Secured Party (it being understood that an amendment or other modification of the type of obligations secured by the Collateral Documents or Guaranteed hereunder or thereunder, so long as such amendment or other modification by its express terms does not alter the Designated Hedge Obligations, Designated Cash Management Services Obligations, Designated Pari Hedge Obligations or Designated Pari Cash Management Services Obligations being so secured or Guaranteed, shall not be deemed to be adverse to any Secured Party holding Designated Hedge Obligations, Designated Cash Management Services Obligations, Designated Pari Hedge Obligations or Designated Pari Cash Management Services Obligations, as the case may be);

(x) subordinate the Collateral Agent's Liens under the Collateral Documents (other than as set forth in the Intercreditor Agreements or as permitted by Section 9.12);

(xi) amend, waive, terminate or otherwise modify Section 8.03 of this Agreement;

(xii) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under any Loan Document except as permitted by this Agreement;

provided that, for the avoidance of doubt, all Lenders shall be deemed directly affected thereby with respect to any amendment described in clauses (vii), (viii), (x), (xi) and (xii).

(3) Other Consents. No amendment, modification, termination or waiver of any provision of the Loan Documents, or consent to any departure by any Loan Party therefrom, shall:

(i) increase any Revolving Commitment of any Lender over the amount thereof then in effect without the consent of such Lender; provided, no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default, and no making of a Protective Advance as contemplated hereby, shall constitute an increase in any Revolving Commitment of any Lender;

(ii) amend, modify, terminate or waive any provision hereof relating to (A) the Swing Line Sublimit or the Swing Line Loans without the consent of Swing Line Lender, (B) the Letter of Credit Sublimit without the consent of Issuing Bank, (C) the Issuing Bank Sublimit of any Issuing Bank without the consent of such Issuing Bank or (D) or any Letter of Credit without the consent of the applicable Issuing Bank;

(iii) amend, modify, terminate or waive any obligation of Lenders relating to (A) the purchase of participations in Letters of Credit as provided in Section 2.03(5), (B) the purchase of participations in Protective Advances as provided in Section 2.10(2) or (C) the making of any Revolving Loan as provided in Section 2.03(4), in each case without the written consent of Administrative Agent and of Issuing Bank;

(iv) waive, amend or otherwise modify this Agreement to modify the definition of the term "Borrowing Base" or any component definition thereof in a manner that has the effect of increasing borrowing availability (other than modifications to Reserves implemented by the Administrative Agent in the manner and to the extent expressly provided herein), without the prior written consent of the Supermajority Lenders;

(v) amend, modify, terminate or waive any provision of any fee letter among the Loan Parties and Agents without the consent of the parties thereto; or

(vi) amend, modify, terminate or waive any provision of the Loan Documents as the same applies to any Agent, Arrangers, or Issuing Bank, or any other provision hereof as the same applies to the rights or obligations of any Agent, Arrangers or Issuing Bank, in each case without the consent of such Agent, Arrangers or Issuing Bank, as applicable.

(4) Execution of Amendments, Etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.01 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Loan Party, on such Loan Party.

provided that notwithstanding the foregoing:

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders);

(B) no Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement (i) that is for the purpose of adding Permitted Indebtedness that is Secured Indebtedness (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Intercreditor Agreement in connection with joinders and supplements; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;

(C) [reserved];

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time;

(E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent (or the Collateral Agent, as applicable) to cure any ambiguity, omission, defect or inconsistency (including amendments, supplements or waivers to any of the Collateral Documents, guarantees, intercreditor agreements or related documents executed by any Loan Party or any other Subsidiary in connection with this Agreement if such amendment, supplement or waiver is delivered in order to cause such Collateral Documents, guarantees, intercreditor agreements or related documents to be consistent with this Agreement and the other Loan Documents) so long as, in each case, the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of New Revolving Loans and otherwise to effect the provisions of Section 2.14, 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively.

(5) In addition, notwithstanding anything to the contrary in this Section 10.01, the Guaranty, the Collateral Documents and related documents executed by Loan Parties in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended 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 or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein).

SECTION 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and 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 facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to Holdings, the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. 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, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding 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.

(4) 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 Agent-Related Persons or the Arrangers (collectively, the "**Agent Parties**") have any liability to Holdings, 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 the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided*, *however*, that in no event shall any Agent Party have any liability to Holdings, the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by written 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, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private-Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(6) Reliance by the Administrative Agent. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Funding Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Agent-Related Persons 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. All telephonic notices to and other telephonic 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. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, 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 (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (c) 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 (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.04 Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs and to the extent not paid or reimbursed on or prior to the Closing Date, to pay or reimburse the Administrative Agent and Goldman Sachs Bank USA (in its capacity as an Arranger) for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and such Arrangers incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of a single counsel and, if necessary, a single local counsel in each relevant material jurisdiction, (b) upon presentation of a summary statement, to pay or reimburse the Administrative Agent and the Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Lenders similarly situated taken as a whole)) and (c) to pay or reimburse the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses for field exams, appraisals and inspections performed in connection with the Closing Date and at any time after the Closing Date if permitted by this Agreement. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

SECTION 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents, each other Lender, the Arrangers and their respective Related Persons (collectively, the "**Indemnitees**") from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) any actual or threatened claim, litigation, investigation or proceeding relating to the Transactions or to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents or the Loans or the use, or proposed use of the proceeds therefrom, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all 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 expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or Arrangers or any similar role under any Loan Document and other than any claims arising out of any act or omission of Holdings or any of its Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by any Loan Party or any of its Affiliates under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

SECTION 10.06 Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such 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 (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any 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 Overnight Rate from time to time in effect.

SECTION 10.07 Successors and Assigns; Participations.

(1) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders and Issuing Bank. No Loan Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Loan Party without the prior written consent of all Lenders except as permitted by Section 7.03. 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 and, to the extent expressly contemplated hereby, Affiliates of each of the Agents, Issuing Bank and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(2) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment and Assumption effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.07(4). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment and Assumption and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment and Assumption shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the "**Assignment Effective Date**." Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(3) Right to Assign. Each Lender shall have the right, subject to Section 10.07(9), at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (a) of the definition of the term "Eligible Assignee" upon the giving of notice to Borrower and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (b) of the definition of the term "Eligible Assignee" upon giving of notice to Borrower and Administrative Agent and the prior written consent of Issuing Bank, Swing Line Lender, Borrower and Administrative Agent (such consent not to be (x) unreasonably withheld or delayed or, (y) in the case of Borrower, required at any time an Event of Default under Section 8.01(1), (6) or (7) shall have occurred and then be continuing); provided further that (A) Borrower shall be deemed to have consented to any such assignment of Revolving Loans or Revolving Commitments unless it shall object thereto by written notice to Administrative Agent within 10 Business Days after having received notice thereof and (B) each such assignment pursuant to this Section 10.07(3) shall be in an aggregate amount of not less than (w) $5,000,000 with respect to the assignment of the Revolving Commitments and the Revolving Loans, (x) such lesser amount as agreed to by Borrower and Administrative Agent, (y) the aggregate amount of the Loans of the assigning Lender with respect to the Class being assigned or (z) the amount assigned by an assigning Lender to an Affiliate or Approved Fund of such Lender.

(4) Mechanics.

(i) Assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to Administrative Agent of an Assignment and Assumption. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment and Assumption may be required to deliver pursuant to Section 3.01(3), together with payment to Administrative Agent of a registration and processing fee of $3,500 (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to Goldman Sachs or any Affiliate thereof or (z) in the case of an assignee which is already a Lender or is an affiliate or Approved Fund of a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent, Issuing Bank, Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit and Swing Line Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(5) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.07, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control); and (iv) it is not a Disqualified Institution.

(6) Effect of Assignment. Subject to the terms and conditions of this Section 10.07, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a "Lender" hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a "Lender" for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.14) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender's rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Loan Documents to the contrary notwithstanding, (y) Issuing Bank shall continue to have all rights and obligations thereof with respect to each Letter of Credit until the cancellation or expiration of (without any pending drawing on) such Letter of Credit and the reimbursement of any amounts drawn thereunder and (z) such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee and any Revolving Commitment of such assigning Lender, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new Revolving Commitments and/or outstanding Loans of the assignee and/or the assigning Lender.

(7) Participations.

(i) Each Lender shall have the right at any time to sell one or more participations to any Person (other than Holdings, any of its Subsidiaries or any of its Affiliates, any Disqualified Institution or any natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person)) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.07(7) shall, acting solely for United States federal income tax purposes as a non-fiduciary agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts of each participant's participation interest with respect to the Revolving Loan (each, a "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. 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 a participation with respect to the Revolving Loan for all purposes under this Agreement, notwithstanding any notice to the contrary.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Loan Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Loan Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Borrower agrees that each participant shall be entitled to the benefits of Sections 3.01 and 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (x) 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, except to the extent such entitlement to receive a greater payment results from any change described in Section 3.01 that occurs after the participate acquired the applicable participation, and (y) a participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.04 unless Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower, to comply with Section 3.04 as though it were a Lender; provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.01 as though it were a Lender, provided such participant agrees to be subject to Section 3.01 as though it were a Lender.

(8) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.07 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including to any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank; provided, that no Lender, as among Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(9) Disqualified Institution Provisions. Notwithstanding the foregoing, no assignment or participation shall be made to a Disqualified Institution without Borrower's consent in writing (which consent may be withheld in its sole discretion); provided that upon the request of any Lender to Administrative Agent, the list of Disqualified Institutions shall be made available by Administrative Agent to such Lender. Administrative Agent shall not be responsible for, nor have any liability in connection with maintaining, updating, monitoring or enforcing the list of Disqualified Institutions.

SECTION 10.08 [Reserved].

SECTION 10.09 Confidentiality. Each of the Agents, the Arrangers and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided*, *however*, that such Agent, Arrangers or Lender, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) 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); *provided*, *however*, that each Agent, each Arrangers and each Lender agrees to notify the Borrower promptly thereof to the extent it is legally permitted to do so, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; *provided* that such Agent, such Arrangers or such Lender, as applicable, agrees that it will (x) notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of a regulation examination) unless such notification is prohibited by law, rule or regulation and (y) seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be a Lender or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower, the Agents and the Arrangers, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents and the Arrangers or market standards for dissemination of such type of information which shall in any event require "click through" or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a "due diligence" defense, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arrangers, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Holdings, the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of Holdings, the Borrower or any Affiliate thereof or (z) is independently developed by the Agents, the Lenders, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09.

For purposes of this Section 10.09, "**Information**" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that no information received from Holdings, the Borrower or any Subsidiary or Affiliate thereof after the Closing Date shall be deemed nonconfidential on account of such information not being clearly identified at the time of delivery as being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures 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 Agent, each Arrangers and each Lender acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents, the Arrangers and the Lenders under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent.

SECTION 10.10 Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, 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 to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable 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; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.14 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender 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 10.11 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 any 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 an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.12 Counterparts; Integration; Effectiveness. This Agreement and each of the other Loan Documents 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 facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.13 Electronic Execution of Assignments and Certain Other Documents. The words "delivery," "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Funding Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 10.14 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 the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.16 GOVERNING LAW.

(1) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(2) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(3) THE BORROWER, HOLDINGS, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH 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 10.16. 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.

SECTION 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

SECTION 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender, each other party hereto and their respective successors and assigns.

SECTION 10.19 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents or the Designated Cash Management Services Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 10.20 Use of Name, Logo, etc. Each Loan Party consents to the publication in the ordinary course by Administrative Agent or the Arrangers of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark; *provided* that any such material shall be provided to the Borrower for its review a reasonable period of time in advance of publication. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and the Arrangers.

SECTION 10.21 USA PATRIOT Act; Beneficial Ownership Regulation. Each Lender that is subject to the USA PATRIOT Act and the Beneficial Ownership Regulation and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act and the Beneficial Ownership Regulation. The Borrower 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 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 and the Beneficial Ownership Regulation.

SECTION 10.22 Service of Process. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 10.23 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and Holdings acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and Holdings is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, Arrangers and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any of their respective Affiliates, or any other Person and (B) none of the Agents, the Arrangers nor any Lender has any obligation to the Borrower, Holdings 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 Agents, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Agents, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.24 [Reserved].

SECTION 10.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) 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

(2) 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 in-struments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

SECTION 10.26 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Employee Benefit Plans in connection with the Loans or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemption have been satisfied, with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent or any of its Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any other Loan Document or any documents related to hereto or thereto).

(c) The Administrative Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, arrangement fees, agency fees, amendment fees, processing fees, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 10.27 Recognition of U.S. Special Resolution Regimes.

(a) To the extent that this Agreement provides support, through a guarantee or otherwise, for swap agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes"), in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that this Agreement 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 U.S. or any other state of the U.S.).

(b) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, default rights under this Agreement that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and this Agreement were governed by the laws of the U.S. or a state of the U.S. 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. Each Loan Party represents and warrants to the Administrative Agent and the Lenders that it is not a Covered Party.

(c) As used in this Section 10.27, the following terms have the following meanings:

(i) "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 part.

(ii) "Covered Entity" means any of the following:

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

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

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

(iii) "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.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BIG RIVER STEEL LLC, as the Borrower

By: _____
Name:
Title:

BRS INTERMEDIATE HOLDINGS LLC, as Holdings

By: _____
Name:
Title:

GOLDMAN SACHS BANK USA, as
Administrative Agent and Lender

By: _____
Name:
Title: Authorized Signatory

[Signature Page to ABL Credit Agreement]

[INSERT LENDER SIGNATURE PAGES]

By: _____

Name:

Title:

[Signature Page to ABL Credit Agreement]

ANNEX B

Schedule 2.01

Commitments

Lender		Total Commitment
Goldman Sachs Bank USA	$	70,500,000
BMO Harris Bank, N.A.	$	70,500,000
Wells Fargo Bank, N.A.	$	70,500,000
Bank of America, N.A.	$	70,500,000
First Security Bank	$	30,000,000
Truist Bank	$	38,000,000
Total	**$**	**350,000,000**

ANNEX C

New Revolving Loan Commitments

Lender	New Revolving Loan Commitment
Goldman Sachs Bank USA	$ 15,500,000
BMO Harris Bank, N.A.	$ 15,500,000
Wells Fargo Bank, N.A.	$ 15,500,000
Bank of America, N.A.	$ 30,500,000
First Security Bank	$ 10,000,000
Truist Bank	$ 38,000,000
Total	**$ 125,000,000**

Exhibit 10.2.1

EXECUTION VERSION

BOND FINANCING AGREEMENT

between

ARKANSAS DEVELOPMENT FINANCE AUTHORITY,

and each of

BIG RIVER STEEL LLC,

BRS FINANCE CORP.,

and

BRS INTERMEDIATE HOLDINGS LLC

Dated as of September 10, 2020

relating to

$265,000,000
Arkansas Development Finance Authority
Industrial Development Revenue Bonds
(Big River Steel Project),
Tax-Exempt Series 2020
(Green Bonds)

The interest of Arkansas Development Finance Authority in this Bond Financing Agreement has been assigned (except for the Unassigned Issuer's Rights) pursuant to the Trust Indenture dated as of the date hereof between the Arkansas Development Finance Authority and U.S. Bank National Association, as trustee, and is subject to the security interest of U.S. Bank National Association, as trustee.

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BOND FINANCING AGREEMENT

THIS BOND FINANCING AGREEMENT, dated as of September 10, 2020 (this "Financing Agreement" or "Bond Financing Agreement"), is entered into between ARKANSAS DEVELOPMENT FINANCE AUTHORITY, a public body corporate and politic created and existing under the Act (the "Issuer" or "Bond Issuer"), and each of BIG RIVER STEEL LLC, a Delaware limited liability company (the "Company" or the "Borrower"), BRS FINANCE CORP., a Delaware corporation ("BRS Finance"), and BRS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company ("Holdings" or "Parent").

WITNESSETH:

WHEREAS, pursuant to and in accordance with the provisions of the Arkansas Development Finance Authority Act, Title 15, Chapter 5, Subchapters 1 through 3 of the Arkansas Code of 1987 Annotated (as amended, the "Act"), by appropriate action duly taken by the Board of Directors of the Issuer, and in furtherance of the purposes of the Act, the Issuer proposes to issue (a) its Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds) (the " Series 2020 Bonds") to provide a loan of the proceeds thereof to the Company pursuant to the provisions of this Financing Agreement to provide financing and refinancing for a portion of the costs incurred in connection with the Tax-Exempt Project; and

WHEREAS, the Issuer proposes to loan the proceeds of the Series 2020 Bonds to the Company upon the terms and conditions set forth herein (the "BFA Loan"); and

WHEREAS, the Company has delivered to the Issuer its Closed End Line of Credit Promissory Note Series 2020, in the form of Exhibit B attached hereto, dated September 10, 2020 (the "Series 2020 Note"), as evidence of its obligations with respect to the BFA Loan under this Financing Agreement; and

WHEREAS, the Issuer will enter into a Trust Indenture, dated as of even date herewith (the "Indenture"), with U.S. Bank National Association, as trustee (the "Trustee"), pursuant to which the Series 2020 Bonds will be issued; and

WHEREAS, to secure the obligations of the Company and the Guarantors under the Series 2020 Note and this Financing Agreement (collectively, the "BFA Loan Obligations"), the Trustee will execute a Joinder to the Collateral Trust Agreement and such obligations shall become entitled to the benefits of Pari Passu Lien Debt;

NOW, THEREFORE, for value received and for due consideration, the receipt and sufficiency of which are hereby acknowledged, and for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definition of Terms. Words and terms not otherwise defined herein shall have the meanings set forth in the Definitions Annex incorporated herein by this reference.

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

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(b) (i) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Bond Document shall refer to such Bond Document as a whole and not to any particular provision thereof.

(ii) References in this Financing Agreement and any other Bond Document to the introductory paragraph, preliminary statements, an Exhibit, Schedule, Article, Section, clause or sub-clause refer (A) to the appropriate introductory paragraph, preliminary statements, Exhibit or Schedule to, or Article, Section, clause or sub-clause in, this Financing Agreement or (B) to the extent such references are not present in this Financing Agreement, to the Bond Document in which such reference appears.

(iii) The terms "include", "includes" and "including" are by way of example and not limitation.

(iv) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(v) The words "assets" and "property" shall be construed to have the same meaning and effect.

(vi) The word "or" is not exclusive.

(c) 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".

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

(e) Whenever in this Financing Agreement the Issuer, the Company or the Trustee is named or referred to, it shall include, and shall be deemed to include, its respective successors and permitted assigns whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of, the Issuer, the Company or the Trustee contained in this Financing Agreement shall bind and inure to the benefit of such respective successors and assigns and shall bind and inure to the benefit of any officer, board, commission, authority, agency or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Issuer or of its successors or permitted assigns, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions of this Financing Agreement.

(f) Nothing in this Financing Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any Person other than the Issuer and the Trustee, including their respective agents and indemnified persons (as such term is used in Section 10.03 hereof), the Company or the Holders and Beneficial Owners of the Bonds or any other Secured Party any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this Financing Agreement contained by or on behalf of the Issuer or the Company shall be for the sole benefit of the Issuer, the Company and the Trustee, including their respective agents and indemnified persons (as such term is used in Section 10.03 hereof), and the Holders of the Bonds.

Section 1.03 Accounting Terms.

(a) 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 Financing Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. For the avoidance of doubt, for purposes of the Bond Documents, any obligation of a Person under a lease that is not (or would not be) required to be classified and accounted for as a capitalized lease on a balance sheet of such Person under GAAP, as in effect as of the Closing Date, shall not be treated as a capitalized lease as a result of the adoption of changes in GAAP or changes in the application of GAAP.

(b) All references herein to GAAP or any other accounting requirements shall refer to such requirements as are in use in the United States at the time of determination of any computation required or permitted hereunder, or, at the option of the Company, such requirements in use on the Closing Date.

Section 1.04 Rounding. Any financial ratios required to be maintained by the Company pursuant to this Financing Agreement (or required to be satisfied in order for a specific action to be permitted under this Financing 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 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organizational Documents, documents (including any Bond Document) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements, replacements, refinancings and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements, replacements, refinancings, and other modifications are not prohibited by any Bond Document; (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law and (c) references to any Person shall include such Person’s successors and permitted assigns.

Section 1.06 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 1.07 Certifications. All certificates and other statements required to be made by any director, officer, employee or member of management of the Company, any Guarantor or any of their respective Subsidiaries pursuant to any Bond Document are and will be made on the behalf of the Company, any such Guarantor or any of their respective Subsidiaries and not in such officer's, director's, employee's or member of management's individual capacity.

Section 1.08 Payment or Performance. When the payment of any obligation or the performance of any action, covenant, duty or obligation under any Bond Document is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

Section 1.09 Classification. Subject to Section 6.01(d)(i), for purposes of determining compliance at any time with Section 6.01, Section 6.02, Section 6.03, Section 6.05, Section 6.06 and Section 6.08, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction or prepayment of Indebtedness meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Section 6.01, Section 6.02, Section 6.03, Section 6.05, Section 6.06 and Section 6.08, the Company, in its sole discretion, may classify and/or reclassify such transaction or item (or portion thereof) from time to time and will only be required to include the amount and type of such transaction (or portion thereof) in any one category.

ARTICLE II

REPRESENTATIONS OF THE ISSUER

The Issuer makes the following representations and warranties to the Company on the Closing Date:

Section 2.01 Constituted Authority. The Issuer is a public body corporate and politic created and existing under the Act. Under the provisions of the Act and applicable laws of the State of Arkansas, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder.

Section 2.02 Suitability for Purpose. Based upon representations of the Company, the Tax-Exempt Project constitutes an "industrial enterprise" within the meaning of the Act. The Issuer makes no representation or warranty concerning the suitability of the Tax-Exempt Project or the Project for the purpose for which they are being undertaken by the Company. The Issuer has not made any independent investigation as to the feasibility of the Tax-Exempt Project or the Project or the creditworthiness of the Company. Any bond purchaser, assignee of this Financing Agreement or any other party with any interest in this transaction shall make its own independent investigation as to the creditworthiness and feasibility of the Tax-Exempt Project and the Project, independent of any representation or warranty of the Issuer. Act. The Issuer hereby finds and determines that all requirements of the Act with respect to the issuance of the Series 2020 Bonds and the execution of this Financing Agreement by the Issuer have been complied with and that issuing the Series 2020 Bonds and entering into this Financing Agreement by the Issuer will be in furtherance of the purposes of the Act.

Section 2.04 Due Power and Authorization. Under the provisions of the Act, the Issuer has full legal right, power and authority to enter into the transactions contemplated by this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder. By proper action, the Issuer has duly authorized the execution, delivery and performance of its obligations under this Financing Agreement and the Indenture.

Section 2.05 Binding Effect. This Financing Agreement and the Indenture each constitutes the legal, valid, and binding limited obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally from time to time in effect, and rights of acceleration, indemnity, and contribution, and the availability of equitable remedies may be limited by equitable principles.

Section 2.06 Resolution. The issuance and sale of the Series 2020 Bonds; the execution and delivery of this Financing Agreement and the assignment of this Financing Agreement and the Series 2020 Note to the Trustee (other than the Unassigned Issuer's Rights); and the performance of all covenants and agreements of the Issuer contained in the Series 2020 Bonds, the Use of Proceeds Certificate and this Financing Agreement have been duly authorized by resolutions of the governing body of the Issuer adopted at meetings thereof duly called and held by the affirmative vote of not less than a majority of a quorum present at such meeting.

Section 2.07 Loan of Proceeds. The Issuer agrees to issue the Series 2020 Bonds and to loan the proceeds thereof to the Company for the purpose of providing financing and refinancing to pay a portion of the Tax-Exempt Project Costs.

Section 2.08 No Default. The execution and delivery of this Financing Agreement, the Indenture and the Use of Proceeds Certificate by the Issuer do not, and consummation of the transactions contemplated hereby and thereby and the performance by the Issuer of its obligations thereunder will not result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Issuer is now a party or by which it is now bound.

Section 2.09 No Other Pledge. The Issuer has not and will not pledge the amounts derived from this Financing Agreement other than to secure the Series 2020 Bonds or any Additional Bonds.

Section 2.10 Volume Cap. The Issuer has carryforward of Arkansas state volume cap from the 2019 calendar year, plus Arkansas state volume cap from the 2020 calendar year in an amount equal to or greater than the aggregate principal amount of the portion of the Series 2020 Bonds for which an allocation of Arkansas state volume cap is required pursuant to the Code.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

On the Closing Date, the Company and, with respect to Sections 3.01, 3.02, 3.04, 3.06, 3.14, and 3.18 only, Holdings represent and warrant to the Issuer that:

Section 3.01 Existence, Qualification and Power. Each of the Company and each Guarantor and their respective Subsidiaries has been (a) duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, and (b) duly qualified as a foreign corporation or limited liability company for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except, in the case of this clause (b), where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect. The Company, each Guarantor and their respective Subsidiaries have full legal right, power, and authority pursuant to its operating agreement or other governing document, as applicable, to (i) enter into the Bond Documents and any and all such other agreements and documents as may be required to be executed, delivered and received by the Borrower or any Guarantor in order to carry out, give effect to and consummate the transactions contemplated in such Bond Documents, in each case to which such Person is a party, and (ii) carry out and to consummate the transactions contemplated by the Bond Documents.

Section 3.02 Authorization; No Contravention.

(a) The Borrower and each Guarantor has duly authorized and approved by all necessary official action the execution and delivery of, and the performance by the Borrower or such Guarantor of the obligations on each of their part contained in the Indenture, the Bond Documents and the Guarantees, as applicable, and any and all such other agreements and documents to which either the Borrower or any Guarantor is a party or as may be required to be executed, delivered or received by the Borrower or any Guarantor in order to carry out, give effect to and consummate the transactions to be consummated by the Borrower or Guarantor, as applicable, and described therein.

(b) (i) None of the Borrower, any Guarantor nor any Subsidiary is in breach or violation of or in default under (A) any applicable organizational document of the Borrower, any Guarantor or any Subsidiary, (B) in any material respect, any statute, law or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over any of the Borrower, any Guarantor or any of their respective Subsidiaries or any of their properties; or (C) in any material respect, any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other material agreement or instrument to which it is a party or by which it or any of its properties may be bound, including the Fixed Asset Pari Passu Lien Collateral Documents, and (ii) the issuance and sale of the Bonds upon the terms set forth in the Indenture and the execution and delivery by the Borrower of the Bond Documents and by the Guarantor of the Guarantees, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under (A) any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument (including the Fixed Asset Pari Passu Lien Collateral Documents) to which any of the Borrower, any Guarantor or any of their respective Subsidiaries is a party or by which any of the Borrower, any Guarantor or any of their respective Subsidiaries is bound or to which any of the property or assets of any of them is subject, except, in the case of this clause for such conflicts, breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect, (B) any applicable organizational document of the Borrower, any Guarantor or any of their respective Subsidiaries, or (C) any law, statute, governmental regulation or any order, rule or regulation of any court or governmental agency or body having jurisdiction over any of the Borrower, any Guarantor any of their respective Subsidiaries or any of their properties, except in the case of clause (C) for such conflicts, breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.03 Governmental Authorization. All approvals, consents, and orders of any Governmental Authority, board, agency, or commission having jurisdiction that would constitute a condition precedent to the performance by the Borrower of its obligations under the Bond Documents, the issuance of the Bonds, and the execution and delivery and performance by the Borrower of the Bond Documents or the execution, delivery and performance by the Guarantors of the Guarantees, have been obtained, except for (a) filings or other actions necessary to maintain the perfection of the Liens on the Collateral granted by the Company, each Guarantor and their respective Subsidiaries in favor of the Pari Passu Lien Secured Parties, (b) those approvals, consents, exemptions, authorizations or other actions, notices or filings described in the Bond Documents, or (c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Except as would not reasonably be expected to result in a Material Adverse Effect, all approvals, consents, and orders of any Governmental Authority, board, agency, or commission having jurisdiction that are required to have been obtained for the construction and operation of the Project have been obtained or will be obtained prior to the Closing Date other than those that are not yet required to be obtained as of the Closing Date. The Borrower has no reason to believe that it will not be able to obtain any material approvals, consents, and orders of any Governmental Authority, board, agency, or commission having jurisdiction that are required to be obtained for the construction and operation of the Project that are not yet required to be obtained as of the Closing Date.

Section 3.04 Binding Effect. This Financing Agreement constitutes, and each of the Bond Documents and the Guarantees (when executed and delivered by the Borrower or any Guarantor, as applicable, and any other parties thereto) and the Fixed Asset Pari Passu Lien Collateral Documents constitute (or did constitute and continues to constitute, in the case of any Bond Document or Fixed Asset Pari Passu Lien Collateral Document executed prior to the date hereof), the legal, valid, and binding obligations of the Borrower or such Guarantor, as applicable, enforceable against the Borrower or such Guarantor, as applicable, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally from time to time in effect, and rights of acceleration, indemnity, and contribution, and the availability of equitable remedies may be limited by equitable principles.

Section 3.05 Financial Statements; No Material Adverse Effect.

(a) The financial statements included in the Limited Offering Memorandum, together with the related schedules and notes, present fairly in all material respects the financial position of the Borrower and the Guarantors and their respective Subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Borrower, the Guarantors and their respective Subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in all material respects in accordance with GAAP the information required to be stated therein.

(b) None of the Borrower nor any Guarantor or any of their respective Subsidiaries has, since the date of the latest audited financial statements included in the Limited Offering Memorandum, (i) sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree or (ii) entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Borrower, any Guarantor and their respective Subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Borrower, the Guarantors and their respective Subsidiaries taken as a whole, in each case, otherwise than as set forth or contemplated in the Limited Offering Memorandum.

Section 3.06 Litigation. Except as otherwise disclosed in the Limited Offering Memorandum, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board, or body, pending or, to the knowledge of the Borrower, threatened against the Borrower, any Guarantor or any of their respective Subsidiaries, (i) affecting the existence of the Borrower or any Guarantor or any of their respective Subsidiaries or the titles of any of their officers to their respective offices, (ii) seeking to prohibit, restrain, or enjoin the issuance, sale, or delivery of the Bonds or the collection of the Trust Estate pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, (iii) in any way contesting or affecting the validity or enforceability of any Bond Document, the Guarantees or Fixed Asset Pari Passu Lien Collateral Document or any amendment or supplement thereto, (iv) contesting the power or authority of the Borrower to execute and deliver any of the Bond Documents or the authority of any of the Guarantors to execute and deliver any of the Guarantees, (v) wherein an unfavorable decision, ruling, or finding would materially adversely affect the validity or enforceability of any of the Bond Documents; or (vi) if determined adversely to the Borrower, the Guarantors or any of their respective Subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

Section 3.07 Ownership of Project; Liens. Each of the Borrower and each Guarantor and their respective Subsidiaries has (i) good and marketable title in fee simple to all real property owned by them, (ii) good and marketable title to all personal property owned by them and (iii) good and marketable leasehold or subleasehold interests in all real property and personal property leased by them pursuant to valid and enforceable leases, in each case, free and clear of all liens, encumbrances and defects, except such as are permitted under the Existing Debt Documents and the Fixed Asset Pari Passu Lien Collateral Documents, or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Borrower and the Guarantors in any material respects.

Section 3.08 Environmental Matters. Except as described in the Limited Offering Memorandum, (i) each of the Borrower, each Guarantor and their respective Subsidiaries is, and at all times prior hereto was, in compliance in all material respects with all laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any Governmental Authority, including, without limitation, any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety relating to hazardous materials, the environment, or natural resources, or to use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws") applicable to such entity, which compliance includes, without limitation, obtaining, maintaining and complying with all permits and authorizations and approvals required by Environmental Laws to conduct their respective businesses, and (ii) none of the Borrower, a Guarantor or any of their respective Subsidiaries has received written notice or otherwise has knowledge of any actual or alleged material violation of Environmental Laws, or of any actual or potential material liability for or other material obligation arising out of the presence, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants. Except as described in the Limited Offering Memorandum, (i) there are no proceedings that are pending against any of the Borrower, the Guarantors or their respective Subsidiaries under Environmental Laws in which a Governmental Authority is also a party, in which any of the Borrower, the Guarantors or their Subsidiaries reasonably believe that monetary fines or sanctions of $100,000 or more could be imposed, (ii) none of the Borrower, any Guarantor or their respective Subsidiaries are aware of any proposed or pending Environmental Laws which any of them reasonably believes will have a material and adverse impact on any of the Borrower, any Guarantors or their respective Subsidiaries within the next two (2) years, and (iii) none of the Borrower, any Guarantor or their respective Subsidiaries reasonably anticipates that any of them will incur material capital expenditures relating to compliance with, or liabilities or obligations under, applicable Environmental Laws within the next two (2) years, beyond those already budgeted to maintain compliance with such Environmental Laws.

Section 3.09 Taxes. Except as described in the Limited Offering Memorandum, each of the Borrower, each Guarantor and their respective Subsidiaries has filed all federal, state and foreign income tax returns and all other material tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all material taxes required to be paid by them to the extent due and payable, except for any such tax that is currently being contested in good faith (provided that appropriate reserves are made), and no material tax deficiency has been determined adversely to any of the Borrower, any Guarantor or any of their respective Subsidiaries, nor does any of the Borrower, any Guarantor or their respective Subsidiaries have any knowledge of any material tax deficiencies that have been asserted.

Section 3.10 Sales and Use Tax. By virtue of the Project being financed under the Act, the Company has not and will not assert that it is entitled to an exemption from Arkansas sales or use taxes on personal property acquired in connection with the Project. The foregoing sentence shall not operate to prevent the Company from seeking or obtaining an exemption or rebate on a basis other than the Project having been financed under the Act.

Section 3.11 Tax-Exempt. The proceeds received from the sale of the Series 2020 Bonds and loaned to the Company pursuant to the terms hereof shall be used in accordance with the Use of Proceeds Certificate and the Indenture, and the Company has not taken or permitted, or omitted to take, and will not take or permit, or omit to take, any action which will in any way (i) cause or result in the proceeds of the sale of the Series 2020 Bonds to be applied in a manner other than as provided in the Use of Proceeds Certificate and the Indenture, or (ii) adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2020 Bonds.

Section 3.12 ERISA. Except as described in the Limited Offering Memorandum, each (i) "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) which any of the Borrower, any Guarantor or any member of their "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "Code")) sponsors (each a "Plan") has been maintained in material compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions eligible for a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or, to the knowledge of the Borrower, is reasonably expected to occur, (B) no failure to satisfy the "minimum funding standard" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred or, to the knowledge of the Borrower, is reasonably expected to occur, (C) the fair market value of the assets under each Plan subject to the funding requirements of Code Section 412 is at least 80% of the present value of all benefits accrued under such Plan (such that the Plan is not subject to funding-based limits under Code Section 436), and (D) each of the Borrower and each Guarantor has not incurred, and does not reasonably expect to incur, any liability (whether directly or as a member of its Controlled Group) under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including with respect to a "multiemployer plan," within the meaning of Section 4001(c)(3) of ERISA); and (iv) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

Section 3.13 Subsidiaries; Equity Interests. As of the Closing Date, the Company has one wholly owned Subsidiary, BRS Finance, and all of the outstanding Equity Interests in the Company have been validly issued and are fully paid and (if applicable) nonassessable, and (a) the Parent owns all outstanding Equity Interests in the Company, and (b) the Company owns all outstanding Equity Interests in BRS Finance, in each case free and clear of all Liens other than Permitted Liens.

Section 3.14 Investment Company Act. The Borrower is not required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

Section 3.15 Solvency. On the Closing Date, the Company is Solvent.

Section 3.16 Compliance with Laws; Anti-Corruption Laws and Sanctions.

(a) Compliance with Laws. Except as described in the Limited Offering Memorandum, the Company is in compliance with the requirements of all applicable Laws and all orders, writs, injunctions and decrees applicable to it, the Plant or the Project, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Anti-Corruption Laws and Sanctions. None of the Borrower, any Guarantor or any of their respective Subsidiaries nor any of their respective directors, members, managers or officers, or, to the knowledge of the Borrower, of each Guarantor and their respective Subsidiaries, any director, officer, member, manager, agent, employee, affiliate or other person associated with or acting on behalf of any of them has (i) made, offered, promised or authorized any unlawful contribution, gift, entertainment or other unlawful expense; (ii) made, offered, promised or authorized any direct or indirect unlawful payment; or (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption law (collectively, the "Anti-Corruption Law").

The operations of each of the Borrower, each Guarantor and any of their respective Subsidiaries are and have been conducted at all times in compliance with the requirements of applicable anti-money laundering laws, including, but not limited to, the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and the anti-money laundering laws of the various jurisdictions in which any such party or its Subsidiaries conduct business (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any of the Borrower, a Guarantor or any of their respective Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of any such entity, threatened.

None of the Borrower, a Guarantor or any of their respective Subsidiaries nor, to the knowledge of the Borrower, any director, officer, member, manager, agent, employee or affiliate of each of the Borrower, each Guarantor or any of their respective Subsidiaries, is currently the subject or the target of any sanctions administered or enforced by the U.S. Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury, or the U.S. Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person," the European Union, Her Majesty's Treasury, the United Nations Security Council, or other relevant sanctions authority (collectively, "Sanctions"), and the Borrower will not directly or indirectly use the proceeds of the offering of the Bonds, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding, is the subject or the target of Sanctions or (ii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as issuer, underwriter, advisor, investor or otherwise) of Sanctions.

Section 3.17 Security. The Fixed Asset Pari Passu Lien Collateral Documents create legally valid and enforceable liens securing the BFA Loan Obligations ranking as contemplated in the Collateral Trust Agreement and Intercreditor Agreement, and no other security interest, lien or other encumbrance exists or will exist over the Borrower's or Guarantors' interest in the Collateral or over any other of the Borrower's or Guarantors' revenues or assets other than Permitted Liens, and on or promptly following the Closing Date, all necessary recordings and filings will have been or will be made such that the security interests created by such Fixed Asset Pari Passu Lien Collateral Documents constitute valid, perfected and continuing security interests on the Collateral under such Fixed Asset Pari Passu Lien Collateral Documents, subject only to Permitted Liens.

Except as otherwise contemplated hereby or under any other Bond Documents, the BFA Loan Obligations will be fully and unconditionally guaranteed (the "Guarantees") on a senior secured basis, jointly and severally, by Holdings, BRS Finance and each current and future domestic subsidiary that is an obligor or guarantor under the ABL Facility (each a "Guarantor" and collectively, the "Guarantors").

Section 3.18 Status as Pari Passu Lien Debt. The BFA Loan Obligations constitute, and shall continue to constitute, Pari Passu Lien Debt pursuant to the terms of the Collateral Trust Agreement and will be on a parity of security with other outstanding debt of the Company or the Guarantors and future debt of the Company or Guarantors, if any, designated as Pari Passu Lien Debt pursuant to the Pari Passu Lien Debt Documents.

Section 3.19 No Default. No Default or Event of Default has occurred and is continuing.

Section 3.20 Location. The Project is located wholly within the State of Arkansas.

Section 3.21 Insurance. Each of the Borrower, each Guarantor and their respective Subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is generally deemed adequate and customary for companies engaged in similar businesses in similar industries. All such policies of insurance are in full force and effect; the Borrower, each Guarantor and their respective Subsidiaries are in compliance with the terms of such policies in all material respects; and none of the Borrower, any Guarantor or their respective Subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance.

ARTICLE IV

ISSUANCE OF THE SERIES 2020 BONDS; USE OF PROCEEDS

Section 4.01 Deposits with the Trustee; Issuance of Series 2020 Bonds. To provide funds to the Company for purposes of financing and refinancing a portion of the Tax-Exempt Project Costs, the Issuer will issue, sell and deliver the Series 2020 Bonds upon the order of the Underwriter as provided in the Purchase Agreement. The Series 2020 Bonds will be issued pursuant to the Indenture in the respective aggregate principal amount, will bear interest, will mature, will be subject to redemption and have such other terms as set forth therein. The Company hereby approves the terms and conditions of the Indenture and the Series 2020 Bonds, and the terms and conditions under which the Series 2020 Bonds will be issued, sold and delivered. The Company and the Issuer agree and, in accordance with Section 5.02 of the Indenture, the Company directs that the proceeds from the sale of the Series 2020 Bonds shall be deposited pursuant to Section 5.02 of the Indenture. The Company acknowledges that it has no ownership interest in the moneys held in the funds and accounts maintained by the Trustee, and specifically, with respect to the Construction Fund, the Company acknowledges and agrees that advances under the Series 2020 Note will be funded from deposits held by the Trustee in the applicable subaccounts only upon delivery of a written requisition satisfying the terms and conditions of the Indenture. The Company further acknowledges and agrees that the Issuer shall have no liability with respect to the investment, rebate, use, application or disbursement of the proceeds from the sale of the Series 2020 Bonds, and pursuant to Section 10.03 hereof, the Company holds the Issuer harmless from any such liability, cost or expense as may result therefrom.

At the request of the Company, and for the purposes and upon fulfillment of the conditions specified in the Indenture, the Issuer may provide for the issuance, sale and delivery of Additional Bonds, in accordance with the Bond Documents and in accordance with the requirements of the Act and other applicable law and make available the proceeds from the sale thereof to the Company.

Section 4.02 Rebate Fund. The Company agrees to make such payments to the Trustee (for deposit in the Rebate Fund as anticipated by Section 5.11 of the Indenture) as are required of it under the Use of Proceeds Certificate. The obligation of the Company to make such payments shall remain in effect and be binding upon the Company notwithstanding the release and discharge of the Indenture and this Financing Agreement. The Company and the Issuer (to the extent within its control) each covenants to the owners of the Tax-Exempt Bonds that, notwithstanding any other provision of this Financing Agreement or any other instrument, it shall take no action, nor shall the Company direct the Trustee to take or approve the Trustee taking any action or direct the Trustee to make or approve the Trustee's making any investment or use of proceeds of the Tax-Exempt Bonds, or any other moneys which may arise out of or in connection with this Financing Agreement, the Indenture or the Tax-Exempt Project, which would cause the Tax-Exempt Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code. In addition, the Company covenants and agrees to comply with the requirements of Section 148(f) of the Code as it may be applicable to the Tax-Exempt Bonds or the proceeds derived from the sale of the Tax-Exempt Bonds or any other moneys which may arise out of, or in connection with, this Financing Agreement, the Indenture or the Tax- Exempt Project throughout the term of the Tax- Exempt Bonds. No provision of this Financing Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations. For purposes of complying with their respective obligations under this Section 4.02 and the Use of Proceeds Certificate, the Issuer and the Company may rely upon the advice of Bond Counsel retained by the Issuer or the Company.

Section 4.03 Use of Series 2020 Bond Proceeds. (a) The Issuer covenants and agrees, upon the terms and conditions in this Financing Agreement and the Series 2020 Note, to use the proceeds of the Series 2020 Bonds (conditioned on the receipt thereof by the Issuer) to make the BFA Loan to the Company for the financing and reimbursement of a portion of the Tax-Exempt Project Costs. The Company agrees to use such proceeds of the Series 2020 Bonds solely for such purposes.

(b) In the event the amounts available to the Company from the BFA Loan should not be sufficient to pay the costs of the Tax-Exempt Project in full, the Company agrees to complete the Tax-Exempt Project and to pay that portion of the Tax-Exempt Project Costs not otherwise financed with proceeds of the BFA Loan. The Issuer does not make any warranty, either expressed or implied, that the proceeds of the BFA Loan will be sufficient to pay all of the Tax-Exempt Project Costs.

Section 4.04 Repayment of Loan.

(a) Whether or not the Company has fully drawn the proceeds of the BFA Loan, at least one (1) Business Day before each date provided in or pursuant to the Indenture for the payment (whether at maturity or upon redemption, tender or acceleration) of principal of, and premium, if any, and interest on, and the purchase price of, the Bonds, until the principal of, and premium, if any, and interest on, and the purchase price of, the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Company shall pay to the Trustee in immediately available funds, for deposit in the Debt Service Fund, and without regard to the principal amount of the BFA Loan, a sum equal to the amount payable on such date (whether at maturity or upon redemption or acceleration) as principal of, and premium, if any, and interest on, the Bonds as provided in the Indenture; *provided*, *however*, that the obligation of the Company to make any such payments shall be reduced by the amount of any moneys then on deposit in the Debt Service Fund and available for such payment. The obligation of the Company to make the payments pursuant to this Financing Agreement shall be absolute and unconditional without defense or set-off by reason of any default by the Issuer under this Financing Agreement or under any other agreement between the Company and the Issuer or for any other reason, including, but not limited to, the unpaid balance of the BFA Loan, it being the intention of the parties that the payments required hereunder will be paid in full when due without any delay or diminution whatsoever and without regard to the principal amount of the BFA Loan.

(b) The Company also agrees to pay (i) the annual fee of the Trustee and the Collateral Agent, for their ordinary services rendered as trustee or collateral agent, respectively, and their ordinary expenses, as and when the same become due, (ii) the fees, charges and expenses (including reasonable legal fees and expenses) of the Trustee previously agreed upon in writing, in each of its respective capacities (including as Registrar, Paying Agent and Authenticating Agent (as each such term is defined in the Indenture)), the reasonable, customary and documented fees of any other paying agent on the Bonds as provided in the Indenture, as and when the same become due, (iii) the fees, charges and expenses of the Trustee for any extraordinary services rendered by it and any extraordinary expenses (including, but not limited to reasonable attorneys' fees and expenses) incurred by it under the Indenture, as and when the same become due, (iv) the cost of printing any Bonds required to be furnished by the Issuer, (v) the cost of printing and typesetting any preliminary offering memorandum, offering memorandum or other offering circular utilized in connection with the sale of any Bonds and any amendment or supplement thereto, (vi) the Issuer's fee at the Closing Date, and (vii) any amounts required to be deposited in the Rebate Fund to comply with the provisions hereof, the Indenture and the Use of Proceeds Certificate, and the payment of any rebate analyst. The Trustee's compensation shall not be limited by any provision of law regarding the compensation of a trustee of an express trust.

(c) The Company also agrees to pay, (i) as soon as practicable after receipt of request for payment thereof, all expenses required to be paid by the Company under the terms of the Purchase Agreement, and (ii) all reasonable, customary and documented expenses of the Issuer, including reasonable legal fees and expenses, related to the Project, and the execution, delivery and performance of this Financing Agreement, the Indenture, and all other agreements and instruments executed in connection with the issuance of the Bonds, which are not otherwise required to be paid by the Company under the terms of this Financing Agreement, including all costs of issuance.

(d) The Company may prepay all or any part of the amounts required to be paid by it under this Financing Agreement or the Series 2020 Note as further provided in Article IX hereof.

Section 4.05 Assignment of Issuer's Rights. As security in part for the payment of the Bonds, the Issuer will assign to the Trustee the Issuer's rights under this Financing Agreement (except the Unassigned Issuer's Rights) and under the Series 2020 Note, and the Issuer hereby directs the Company to make or cause the payments required hereunder to be made (except such payments for expenses and indemnification included in the Unassigned Issuer's Rights) directly to the Trustee. The Company hereby assents to such assignment and agrees to make payments directly to the Trustee without defense or set-off by reason of any dispute between the Company and the Issuer or the Trustee. "*Unassigned Issuer's Rights*" means the Issuer's right to cause the Company to pay for or otherwise reimburse costs and expenses of the Issuer, to enforce certain below-listed obligations of the Company (but not to the exclusion of such enforcement by the Trustee), including, without limitation, all of the Issuer's right to indemnification from the Company under this Financing Agreement, as set forth in Sections 4.01, 4.02, 4.04(b), 4.04(c), 5.06, 5.13, 8.05, 8.10, 8.11, 8.12, 10.01, 10.03, 12.04, 12.06, 12.08, 12.10, 12.12, 12.13 and 12.14 hereof.

Section 4.06 Amounts Remaining in Funds. It is agreed by the parties hereto that after payment in full of (i) the Bonds, or after provision for such payment shall have been made as provided in the Indenture, (ii) the fees, charges and expenses of the Trustee and paying agents in accordance with the Indenture, and (iii) all other amounts required to be paid under this Financing Agreement and the Indenture, any amounts remaining in any fund held by the Trustee under the Indenture (except the Rebate Fund) shall be paid as provided in Section 5.09 of the Indenture.

ARTICLE V

AFFIRMATIVE COVENANTS

The Company hereby agrees that it shall, and, as applicable, shall cause each Restricted Subsidiary to:

Section 5.01 Company Reporting and Information Covenants. So long as any Bonds are Outstanding, the Company will furnish to the Holders the information required by and otherwise comply with the Continuing Disclosure Undertaking Agreement.

Section 5.02 Certificates; Other Information.

(a) Deliver to the Trustee, within one hundred twenty (120) days after the end of each fiscal year ending after the Closing Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Company and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Financing Agreement, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every condition and covenant contained in this Financing Agreement during such fiscal year and is not in Default in the performance or observance of any of the terms, provisions, covenants and conditions of this Financing Agreement (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Financing Agreement, shall promptly (which shall be no more than thirty (30) days after becoming aware of such Default) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer's Certificate specifying such Default, its status and what actions the Company proposes to take with respect thereto.

Section 5.03 Company Existence. Subject to Sections 6.12 and 6.13, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its organizational existence, and the corporate, partnership or other organizational existence of each of its Restricted Subsidiaries, in accordance with the respective Organizational Documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary; provided that the Company shall not be required to preserve the corporate, partnership or other organizational existence of its Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

Section 5.04 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Company or any of the Restricted Subsidiaries excepted.

Section 5.05 Insurance. Maintain with insurance companies that the Company believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Company's and the Restricted Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Company and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Trustee, upon reasonable written request, information presented in reasonable detail as to the insurance so carried*; provided* that notwithstanding the foregoing, in no event will the Company or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. The Company shall use commercially reasonable efforts to ensure that each such policy of insurance (other than business interruption insurance (if any), director and officer insurance and worker's compensation insurance) shall as appropriate and to the extent customary in the applicable jurisdiction governing such policy of insurance for substantially similar financings, (i) name the Collateral Agent, on behalf of the Pari Passu Lien Secured Parties, as an additional insured thereunder as its interests may appear and/or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Pari Passu Lien Secured Parties, as the loss payee thereunder (in the case of property insurance with respect to the Collateral).

Section 5.06 Compliance with Laws. Comply in all material respects with the requirements of all Laws and comply, as applicable, with the USA PATRIOT Act, sanctions administered by OFAC and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except, in each case, in instances in which (i) such requirement of Law, order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

Section 5.07 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Company or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 5.08 Inspection Rights. Permit representatives of the Trustee and each Bond Holder to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (other than the records of the Board of Directors of the Company, any Guarantor or any of their respective Subsidiaries), and to discuss its affairs, finances and accounts with its directors, officers, and independent accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Company and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; *provided* that, only the Trustee on behalf of the Bond Holders may exercise rights of the Trustee and the Bond Holders under this Section 5.08 and the Trustee shall not exercise such rights more often than one (1) time during any calendar year absent the existence of an Event of Default and such one (1) time shall be at the Company's expense; *provided*, *further*, that when an Event of Default exists, the Trustee (or any of its respective representatives or independent contractors) on behalf of the Bond Holders may do any of the foregoing at the expense of the Company at any time during normal business hours and upon reasonable advance notice. The Trustee and the Bond Holders shall give the Company the opportunity to participate in any discussions with the Company's independent public accountants. Notwithstanding anything to the contrary in this Section 5.08, none of the Company or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Trustee or any Bond Holder (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product; *provided* that, to the extent legally permissible, the Company shall notify the Trustee in writing that any such document, information or other matter is being withheld pursuant to clauses (a), (b) or (c) of this Section 5.08 and shall use commercially reasonable efforts to communicate, to the extent permitted, the applicable information in a way that would not violate such restrictions and to eliminate such restrictions.

Section 5.09 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits.

Section 5.10 Further Assurances. Subject to the provisions and limitations of Section 6.11 and any applicable limitations in any Fixed Asset Pari Passu Lien Collateral Document and in each case at the expense of the Company, promptly as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Fixed Asset Pari Passu Lien Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Trustee or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Fixed Asset Pari Passu Lien Collateral Documents.

Section 5.11 Maintenance of Ratings. Use commercially reasonable efforts to maintain ratings on the Bonds by the Rating Agencies so long as the Bonds are Outstanding under the Indenture and the Rating Agencies continue to rate securities issued by or on behalf of an entity similar to the Company.

Section 5.12 Taxes. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.13 Tax Covenants. Not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2020 Bonds under the Code. Without limiting the generality of the foregoing, the Company will comply with the instructions and requirements of the Use of Proceeds Certificate, which is incorporated herein as if set forth fully herein. The Company will, on a timely basis, provide the Trustee with written evidence of the Company's computation of the Company's rebate requirement or yield reduction payments and, with respect to the Company's rebate requirement or yield reduction payments (both as may be required under the Use of Proceeds Certificate) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Company to comply with all arbitrage and rebate requirements of the Code. For purposes of complying with its obligations under this Section 5.13 and the Use of Proceeds Certificate, the Company may rely upon the advice of Bond counsel retained by the Company. Notwithstanding any other provision of this Financing Agreement or Article IX of the Indenture to the contrary, the covenants contained in this Section 5.13 shall survive the defeasance or payment in full of any and all Series 2020 Bonds.

Section 5.14 Certificate of Completion. In order to facilitate complying with §148 of the Code, within thirty (30) days of completion of the Tax-Exempt Project, provide the Trustee with a certificate stating that construction of the Tax-Exempt Project has been completed and all costs and expenses incurred in connection therewith have been paid or provided for and a certificate of occupancy for the Tax-Exempt Project has been issued by appropriate local governmental authorities, if applicable. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties that exist at the date of such certificate or that may subsequently come into being.

ARTICLE VI

NEGATIVE COVENANTS

Section 6.01 Limitation on Restricted Payments.

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

(I) declare or pay any dividend or make any payment or distribution on account of the Company's or any Restricted Subsidiary's Equity Interests to any Person other than the Company or any Restricted Subsidiary of the Company (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(A) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Company or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(B) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Company or a Restricted Subsidiary receives at least its *pro rata* share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Company or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Company or a Restricted Subsidiary;

(III) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Subordinated Indebtedness, other than:

(A) Indebtedness permitted under Sections 6.03(b)(8), (9) and (10); or

(B) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or

(IV) make any Restricted Investment;

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

(1) no Default or Event of Default will have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to any such Restricted Payment made utilizing clause (3)(A) below on a *pro forma* basis, the Company could incur $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments (including the fair market value of any non-cash amount) made by the Company and its Restricted Subsidiaries after May 31, 2019 (the "Base Date") (excluding Restricted Payments permitted by Section 6.01(b), other than Sections 6.01(b)(1), (8) and (14), is less than the sum of (without duplication):

(A) 50.00% of the Consolidated Net Income of the Company for the period (taken as one accounting period) beginning on the first fiscal quarter commencing after the Closing Date to the end of the most recently ended fiscal quarter for which internal financial statements are available (as determined in good faith by the Company) preceding such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, *minus* 100.00% of such deficit; *plus*

(B) 100.00% of the aggregate net cash proceeds and the fair market value of marketable securities or other property received by the Company and its Restricted Subsidiaries since the Base Date from the issue or sale of:

(i) (A) Equity Interests of the Company, including Treasury Capital Stock, but excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of:

(x) Equity Interests to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, its Subsidiaries or any Parent Company after the Base Date to the extent the amount of such cash proceeds have been applied to Restricted Payments made in accordance with Section 6.01(b)(4); and

(y) Designated Preferred Stock; and

(B) Equity Interests of Parent Companies, to the extent the proceeds of any such issuance or consideration for any such sale are contributed to the Company (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with Section 6.01(b)(4)); or

(ii) Indebtedness of the Company or any Restricted Subsidiary, that has been converted into or exchanged for Equity Interests of the Company or any Parent Company;

provided that this clause (3)(B) will not include the proceeds from (V) Refunding Capital Stock (as defined below) applied in accordance with Section 6.01(b)(2), (W) Equity Interests or convertible debt securities of the Company sold to a Restricted Subsidiary, (X) Disqualified Stock or debt securities or Indebtedness that have been converted into Disqualified Stock, (Y) Excluded Contributions or (Z) Capex Equity; *plus*

(C) 100.00% of the aggregate amount of cash, Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Company (other than in the form of Disqualified Stock) following the Base Date (including the fair market value of any Indebtedness contributed to the Company or its Restricted Subsidiaries for cancellation) or that becomes part of the capital of the Company through consolidation, amalgamation or merger following the Base Date, in each case not involving cash consideration payable by the Company (other than (X) cash, Cash Equivalents and marketable securities or other property that are contributed by a Restricted Subsidiary, (Y) Excluded Contributions or (Z) Capex Equity); *plus*

(D) 100.00% of the aggregate amount received in cash and the fair market value of marketable securities or other property received by the Company or a Restricted Subsidiary by means of:

(i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of, or other returns on Investments from, Restricted Investments made by the Company or its Restricted Subsidiaries (including cash distributions and cash interest received in respect of Restricted Investments) and repurchases and redemptions of such Restricted Investments from the Company or its Restricted Subsidiaries (other than by the Company or a Restricted Subsidiary) and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Company or its Restricted Subsidiaries, in each case after the Base Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof); or

(ii) the sale (other than to the Company or a Restricted Subsidiary) of Equity Interests of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but including such cash or fair market value to the extent exceeding the amount of such Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Base Date (excluding any Excluded Contributions made pursuant to clause (2) or (3) of the definition thereof); or

(iii) any cash returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a dollar-denominated or ratio-based basket (to the extent in excess of the original amount of such Investment and not included in Consolidated Net Income); *plus*

(E) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Company or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Company or a Restricted Subsidiary after the Base Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of cash or fair market value; *plus*

(F) 100.00% of the aggregate amount of Declined Excess Proceeds; *plus*

(G) the greater of (i) $10.0 million and (ii) 7.5% of the Consolidated EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis).

(b) Section 6.01(a) will not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within sixty (60) days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Financing Agreement;

(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Company or any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("Treasury Capital Stock"), or (ii) Subordinated Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Company or any Parent Company (in the case of proceeds, to the extent any such proceeds therefrom are contributed to the Company) (in each case, other than Disqualified Stock) ("Refunding Capital Stock") and (y) within one hundred twenty (120) days of such sale or issuance, (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Company or to an employee stock ownership plan or any trust established by the Company or any Restricted Subsidiary) of Refunding Capital Stock made within one hundred twenty (120) days of such sale or issuance, and (c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Company was permitted under Section 6.01(b)(6)(A) or (B), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount per annum no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of (a) Subordinated Indebtedness of the Company or BRS Finance or a Subsidiary Guarantor made (i) by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Subordinated Indebtedness of the Company or BRS Finance or a Subsidiary Guarantor or Disqualified Stock of the Company or BRS Finance or a Subsidiary Guarantor and (ii) within one hundred twenty (120) days of such sale, issuance or incurrence, (b) Disqualified Stock of the Company or BRS Finance or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, Disqualified Stock or Subordinated Indebtedness of the Company or BRS Finance or a Subsidiary Guarantor, made within one hundred twenty (120) days of such sale, issuance or incurrence, (c) Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made within one hundred twenty (120) days of such sale or issuance that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 6.03 and (d) any Subordinated Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Company or any Parent Company held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Company or any Parent Company in connection with any such repurchase, retirement or other acquisition); *provided* that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $20.0 million in any calendar year (increasing to $40.0 million following an underwritten public Equity Offering by the Company or any Parent Company) with unused amounts in any calendar year being carried over to succeeding calendar years; *provided*, *further*, that such amount in any calendar year under this clause (4) may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Company and, to the extent contributed to the Company, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company, or pursuant to any Management Services Agreements, that occurs after the Base Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of Section 6.01(a)(3); *plus*

(B) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Restricted Subsidiaries or pursuant to any Management Services Agreements that are foregone in exchange for the receipt of Equity Interests of the Company pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(C) the cash proceeds of life insurance policies received by the Company or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Company (other than in the form of Disqualified Stock)) after the Base Date; *minus*

(D) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A), (B) and (C) of this clause (4);

and *provided* that the Company may elect to apply all or any portion of the aggregate increase contemplated by Sections 6.01(b)(4)(A), (B) and (C) in any calendar year and *provided*, *further*, that cancellation of Indebtedness owing to the Company or any of its Restricted Subsidiaries from any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), of the Company, any Parent Company or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Company or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 6.01 or any other provision of this Financing Agreement;

(5) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Company or any Restricted Subsidiary or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 6.03 to the extent such dividends or distributions are included in the definition of "Fixed Charges";

(6) (A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Company or any Restricted Subsidiary after the Base Date;

(B) the declaration and payment of dividends or distributions to any Parent Company, the proceeds of which will be used to fund the payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by such Parent Company after the Base Date; *provided* that the amount of dividends and distributions paid pursuant to this clause (B) will not exceed the aggregate amount of cash actually contributed to the Company from the sale of such Designated Preferred Stock; or

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to Section 6.01(b)(2);

provided that in the case of each of clauses (A), (B) and (C) of this clause (6), for the most recently ended Test Period preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Company would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(7) (a) payments made or expected to be made by the Company or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Company or any Restricted Subsidiary or any Parent Company, (b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and (c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Company or any Parent Company or any Restricted Subsidiary of the Company in connection with such Person's purchase of Equity Interests of the Company or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Company's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on a Parent Company's common equity), following the first public offering of the Company's common equity or the common equity of any Parent Company after the Closing Date, in an amount not to exceed the sum of (a) 6.00% per annum of the net cash proceeds received by or contributed to the Company in or from any such public offering, other than public offerings with respect to the Company's or such Parent Company's common equity registered on Form S-4 or Form S-8 and other than any public sale constituting an Excluded Contribution, or Capex Equity and (b) an aggregate amount per annum not to exceed 6.00% of Market Capitalization;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is made) the greater of (a) $15.0 million and (b) 10.0% of the Consolidated EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis);

(11) distributions or payments of Securitization Fees;

(12) the repurchase, redemption, defeasance, acquisition or retirement for value of any Subordinated Indebtedness pursuant to the provisions similar to those of Sections 6.04 or 6.08; *provided* that (i) at or prior to such repurchase, redemption, defeasance, acquisition or retirement, the Company and/or BRS Finance (or a third person permitted by this Financing Agreement) have made any required Change of Control Offer or Asset Sale Offer, as applicable, to purchase the Bonds on the terms provided in this Financing Agreement applicable to Change of Control Offers or Asset Sale Offers, respectively, and (ii) all Bonds validly tendered and not validly withdrawn by Holders in any such Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed, acquired or retired for value;

(13) the declaration and payment of dividends or distributions by the Company or a Restricted Subsidiary to, or the making of loans or advances to, the Company or any Parent Company in amounts required for any Parent Company to pay, in each case without duplication:

(a) franchise, excise and similar taxes, and other fees and expenses required to maintain their corporate or other legal existence;

(b) (i) for any taxable period (or portion thereof) for which the Company or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a "Tax Group"), the portion of any U.S. federal, foreign, state or local income taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Company and/or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries); *provided* that for each taxable period, (x) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Company and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group and (y) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Company or any Restricted Subsidiary for such purpose; or

(ii) for any taxable period (or portion thereof) for which the Company and any Parent Company is a partnership or disregarded entity for U.S. federal income tax purposes, cash distributions ("Tax Distributions") to each direct or indirect member of the Parent Company in accordance with the terms of its relevant operating agreement, in an aggregate amount not to exceed the product of (A) the taxable income of the Company allocable to such member for such period reduced by any taxable loss of the Company allocated to such member with respect to any prior taxable periods (or portions thereof) ending after the Closing Date (provided that any such taxable loss will be taken into account only to the extent that (I) such taxable loss was not previously taken into account in determining the amount of any Tax Distributions pursuant to this clause (b)(ii), (II) such taxable loss would be deductible if such loss had been incurred in the current taxable period, and (III) such taxable loss would actually reduce the tax liability of such member for such taxable period, taking into account any alternative minimum tax consequences as well as the character of the taxable loss and of the Company's and its Subsidiaries' income, and assuming for the purposes of this subclause (III) that such member, for all tax years (or portions thereof) ending after the Closing Date, has been a taxable corporation that has held no assets other than such member's direct or indirect interest in the Company or Parent Company), in each case, determined by taking into account any basis step-up in the assets of the Company or any of its Subsidiaries (including any step-up attributable to such member under section 743 of the Code), and (B) the maximum combined effective tax rate applicable to any direct or indirect equity owner of the Company or Parent Company for such taxable period (taking into account the character of the taxable income in question (*e.g.* long-term capital gain, qualified dividend income, etc.) and the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitations thereon)); *provided* that the amount of any Tax Distribution permitted under this clause (b)(ii) shall be reduced by the amount of any income taxes that are paid directly by the Company and attributable to such member;

(c) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management, consultants and independent contractors of any Parent Company and any payroll, social security or similar taxes thereof;

(d) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company;

(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(f) amounts that would be permitted to be paid directly by the Company or its Restricted Subsidiaries under Section 6.05 (other than clause (b)(2)(a) thereof); and

(g) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 6.01 if made by the Company; *provided* that (A) such Restricted Payment must be made within one hundred twenty (120) days of the closing of such Investment, acquisition or investment, (B) such Parent Company must, promptly following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Company or one of its Restricted Subsidiaries or (2) the merger, amalgamation, consolidation, or sale of the Person formed or acquired into the Company or one of its Restricted Subsidiaries (to the extent not prohibited by Section 6.13) in order to consummate such Investment, acquisition or investment, (C) such Parent Company and its Affiliates (other than the Company or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Company or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Financing Agreement, (D) any property received by the Company may not increase amounts available for Restricted Payments pursuant to Section 6.01(a)(3) and (E) to the extent constituting an Investment, such Investment will be deemed to be made by the Company or such Restricted Subsidiary pursuant to another provision of this Section 6.01 (other than pursuant to Section 6.01(b)(9)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);

(14) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Company or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents);

(15) cash payments or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Company, any of its Restricted Subsidiaries or any Parent Company;

(16) other Restricted Payments, *provided* that after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 3.00 to 1.00;

(17) payments made for the benefit of the Company or any of its Restricted Subsidiaries to the extent such payments could have been made by the Company or any of its Restricted Subsidiaries because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 6.05;

(18) payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Financing Agreement or any other transaction that complies with the terms of this Financing Agreement;

(19) the payment of dividends, other distributions and other amounts by the Company to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest and/or principal (including AHYDO "catch-up payments") on Indebtedness, the proceeds of which have been permanently contributed to the Company or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Company or any Restricted Subsidiary incurred in accordance with this Financing Agreement; *provided* that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Company for the incurrence of such Indebtedness;

(20) the making of cash payments in connection with any conversion of Convertible Indebtedness of the Company, BRS Finance or any Restricted Subsidiary in an aggregate amount since the Base Date not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Company, BRS Finance or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(21) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Company's common equity upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common equity upon any early termination thereof; and

(22) the refinancing of any Subordinated Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness;

provided that at the time of, and after giving effect to, any Restricted Payment permitted under Section 6.01(b)(6), (10) and (16), in respect of Restricted Payments described in clauses (I), (II) or (III) of Section 6.01(a), no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of Sections 6.01(b)(7) and (13), taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 6.01, in the event that any Restricted Payment or Investment (or a portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in Section 6.01(a) or 6.01(b), but excluding 6.01(b)(22), and/or one or more of the clauses contained in the definition of "Permitted Investments", the Company will, in its sole discretion, be entitled to divide or classify (or later divide, classify or reclassify), in whole or in part, such Restricted Payment or Investment (or any portion thereof) among Section 6.01(a) and/or 6.01(b), but excluding 6.01(b)(22), and/or one or more clauses contained in the definition of "Permitted Investments," in a manner that otherwise complies with this Section 6.01. The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Company's election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Company or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

(d) As of the Closing Date, all of the Company's Subsidiaries will be Restricted Subsidiaries. The Company will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the penultimate sentence of the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments or Permitted Investments in an amount determined as set forth in the definition of "Investments." Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time pursuant to this Section 6.01 or if an Investment would be permitted at such time, pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in this Financing Agreement. For the avoidance of doubt, this Section 6.01 will not restrict the making of any "AHYDO catch up payment" with respect to, and required by the terms of, any Indebtedness of the Company or any Restricted Subsidiary permitted to be incurred under the terms of this Financing Agreement.

Section 6.02 Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

(a) The Company will not, and will not permit any Restricted Subsidiary that is not a Subsidiary Guarantor to, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(1) (A) pay dividends or make any other distributions to the Company or BRS Finance or any Restricted Subsidiary that is a Subsidiary Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(B) pay any Indebtedness owed to the Company or BRS Finance or to any Restricted Subsidiary that is a Subsidiary Guarantor;

(2) make loans or advances to the Company or BRS Finance or to any Restricted Subsidiary that is a Subsidiary Guarantor; or

(3) sell, lease or transfer any of its properties or assets to the Company or BRS Finance or to any Restricted Subsidiary that is a Subsidiary Guarantor;

provided that dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.

(b) The restrictions in Section 6.02(a) will not apply to encumbrances or restrictions existing under or by reason of:

(1) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Term Loan Credit Agreement, the ABL Facility and the related documentation and Hedging Obligations and the related documentation;

(2) this Financing Agreement, the Series 2020 Note, the Indenture, the Bonds, the Notes Indenture, the Guarantees thereof, the 2019 Bond Financing Agreement, the 2019 Note and guarantees thereof, the 2019 Bond Indenture, the 2019 Bonds and the Security Documents;

(3) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in Section 6.02(a)(3) on the property so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with or into the Company or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Company or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries or the property or assets so acquired or designated;

(6) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Company pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(7) Secured Indebtedness otherwise permitted to be incurred pursuant to Sections 6.03 and 6.06 that limit the right of the debtor to dispose of assets or incur Liens;

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Permitted Liens;

(9) provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Subsidiary Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 6.03;

(10) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business;

(11) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to intellectual property and other agreements;

(12) restrictions created in connection with any Qualified Securitization Facility or Receivables Financing Transaction that, in the good faith determination of the Company, are necessary or advisable to effect such Qualified Securitization Facility or Receivables Financing Transaction;

(13) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Company or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; provided that such agreement prohibits the encumbrance of solely the property or assets of the Company or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Company or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(14) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Company or any Restricted Subsidiary;

(15) customary provisions restricting assignment of any agreement;

(16) restrictions arising in connection with cash or other deposits permitted under Section 6.06;

(17) any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 6.03 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to the Company or any Restricted Subsidiary than (A) the restrictions contained in this Financing Agreement, the 2019 Bond Financing Agreement, the Term Loan Credit Agreement, the Notes Indenture or the ABL Facility as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to the Company or that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Holders than is customary in comparable financings for similarly situated entities or (iii) will not materially impair the Company's ability to make payments due and owing pursuant to this Financing Agreement when due, in each case in the good faith judgment of the Company;

(18) (i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 6.03(b)(5) and any permitted refinancing in respect thereof, and (ii) agreements entered into in connection with a Sale and Lease-Back Transaction entered into in the ordinary course of business or consistent with industry practice or a Specified Sale and Lease-Back Transaction;

(19) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.02;

(20) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; provided that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Company or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;

(21) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (20) of this Section 6.02(b); provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(22) any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; provided that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Company, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(23) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 6.03 is incurred or issued; and

(24) restrictions on the sale, lease or transfer of property or assets arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company and the Restricted Subsidiaries, taken as a whole.

Section 6.03 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, create, incur, issue, assume, guarantee or otherwise become directly or indirectly, liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and the Company will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided* that the Company may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio of the Company for the Company's most recently ended Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period.

(b) Section 6.03(a) will not apply to:

(1) the incurrence of Indebtedness pursuant to Credit Facilities by the Company or any Restricted Subsidiary and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) in an aggregate principal amount not to exceed the greater of (a) the ABL Cap Amount (as such amount may be modified pursuant to and in compliance with subparagraph (5) of the definition of ABL Obligations) and (b) the sum of (i) 75% of the book value (calculated in accordance with GAAP) of the inventory of the Company and any Restricted Subsidiaries (excluding LIFO reserves) and (ii) 90% of the book value of accounts receivable of the Company and any Restricted Subsidiaries (in each case, calculated on a pro forma basis by the book value set forth on the consolidated balance sheet of the Company for the most recently ended Test Period); *provided* that any Indebtedness incurred under this Section 6.03(b)(1) may be extended, replaced, refunded, refinanced, renewed or defeased (including through successive extensions, replacements, refundings, refinancings, renewals and defeasances) with new Indebtedness so long as the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the sum of (x) the principal amount (or accreted value, if applicable) of the Indebtedness being so extended, replaced, refunded, refinanced, renewed or defeased (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced to the extent permanently terminated at the time of incurrence of such new Indebtedness), *plus* (y) any accrued and unpaid interest on the Indebtedness being refinanced, *plus* (z) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the incurrence of such new Indebtedness or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness;

(2) Other Pari Passu Lien Obligations incurred by the Company, BRS Finance or any Restricted Subsidiary, which when aggregated with all other Pari Passu Lien Obligations incurred in reliance on this clause (2), together with any Refinancing Indebtedness in respect thereof (excluding Incremental Amounts) do not exceed the Other Pari Passu Lien Obligations Debt Limit after giving pro forma effect to such incurrence and the application of the net proceeds therefrom;

(3) (a) the incurrence by the Company or BRS Finance and any Subsidiary Guarantor of Indebtedness represented by the obligations under this Financing Agreement and the Series 2020 Note and related Guarantees (but excluding any obligations under this Financing Agreement related to the issuance of Additional Bonds and related guarantees issued after the Closing Date); (b) the incurrence by the Company and any Subsidiary Guarantor of Indebtedness represented by the Obligations under the 2019 Bond Financing Agreement and related guarantees (but excluding any obligations under the 2019 Bond Financing Agreement related to additional bonds and related guarantees issued after the Closing Date); and (c) the incurrence by the Company or BRS Finance and any Subsidiary Guarantor of Indebtedness represented by the Senior Secured Notes and related Guarantees (but excluding any additional notes issued under the Notes Indenture and related Guarantees issued after the Closing Date);

(4) the incurrence of Indebtedness by the Company and any Restricted Subsidiary in existence on the Closing Date (excluding Indebtedness described in Sections 6.03(b)(1), (2) and (3));

(5) (a) the incurrence of Attributable Indebtedness and (b) Indebtedness (including Purchase Money Obligations) and Disqualified Stock incurred or issued by the Company or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock and/or Preferred Stock incurred or issued and outstanding under this clause (5) at such time, not to exceed (as of the date such Indebtedness, Disqualified Stock and/or Preferred Stock is issued, incurred or otherwise obtained) the greater of (x) $100.0 million and (y) 60% of Consolidated EBITDA of the Company and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);

(6) Indebtedness incurred by the Company or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(7) the incurrence of Indebtedness arising from agreements of the Company or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets, property or a Person that becomes a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets, property or a Person that becomes a Subsidiary for the purpose of financing such acquisition;

(8) the incurrence of Indebtedness or the issuance of Disqualified Stock by the Company and owing to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to any Restricted Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Subsidiary Guarantor or BRS Finance is expressly subordinated in right of payment to the Bonds to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Company or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent the Disqualified Stock is then outstanding) not permitted by this clause (8);

(9) the incurrence of Indebtedness by a Restricted Subsidiary and owing to the Company or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Company or any Restricted Subsidiary) to the extent such Indebtedness constitutes a Permitted Investment; *provided* that any such Indebtedness for borrowed money incurred by a Subsidiary Guarantor or BRS Finance and owing to a Restricted Subsidiary that is not a Subsidiary Guarantor or BRS Finance is expressly subordinated in right of payment to the BFA Loan Obligations of such Subsidiary Guarantor or the BFA Loan Obligations of BRS Finance to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (9);

(10) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Company or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Company or any Restricted Subsidiary); *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Company or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (10);

(11) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(12) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal, surety and similar bonds and performance, banker's acceptance facilities and completion guarantees and similar obligations (including guarantees thereof) provided by the Company or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(13) the incurrence of Indebtedness or issuance of Disqualified Stock of the Company and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (13), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (x) $100.0 million and (y) 60% of Consolidated EBITDA of the Company and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance); plus, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased *plus* (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock;

(14) the incurrence or issuance by the Company of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to refund, refinance, extend, replace, renew or defease (collectively, "refinance" with "refinances," "refinanced," and "refinancing" having a correlative meaning) any Indebtedness (including any Designated Revolving Commitments) incurred or Disqualified Stock or Preferred Stock issued as permitted under Sections 6.03(a) and Sections 6.03(b)(2), (3), (4), (5), (13), this Section 6.03(b)(14) and Section 6.03(b)(15) or any successive Refinancing Indebtedness with respect to any of the foregoing;

(15) the incurrence or issuance of:

(a) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred or issued to finance an acquisition or investment (or other purchase of assets) or that is assumed by the Company or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets) including any Acquired Indebtedness; and (b) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Company or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Company or a Restricted Subsidiary in accordance with the terms of this Financing Agreement, including any Acquired Indebtedness; *provided* that in the case of the preceding clauses (a) and (b) either:

(A) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; or

(B) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Fixed Charge Coverage Ratio of the Company for the Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this clause (B)) would be no less than the Fixed Charge Coverage Ratio immediately prior to giving effect to such incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, in each case, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;

(16) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(17) the incurrence of Indebtedness of the Company or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to any Credit Facility, in a principal amount not in excess of the stated amount of such letter of credit or bank guarantee;

(18) (a) the incurrence of any guarantee by the Company or a Restricted Subsidiary of Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligation incurred by the Company or such Restricted Subsidiary is permitted under the terms of this Financing Agreement, or (b) any co-issuance by the Company or any Restricted Subsidiary of any Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Company or such Restricted Subsidiary was permitted under the terms of this Financing Agreement;

(19) the incurrence of Indebtedness issued by the Company or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Company or any Parent Company to the extent described in Section 6.01(b)(4);

(20) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(21) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Company, any Subsidiaries or any joint venture and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(22) Indebtedness incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's length commercial terms;

(23) the incurrence of Indebtedness of the Company or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(24) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Company that are not Subsidiary Guarantors or BRS Finance in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (24), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (a) $100.0 million and (b) 60% of Consolidated EBITDA of the Company for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);

(25) the incurrence of Indebtedness by the Company or any Restricted Subsidiary to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Bonds in accordance with this Financing Agreement;

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees, and distribution partners and guarantees required by PUCs or other Governmental Authorities in the ordinary course of business;

(27) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Company or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Financing Agreement;

(28) repayment obligations with respect to grants from Governmental Authorities;

(29) Qualified Securitization Facilities and, to the extent constituting Indebtedness, Receivables Financing Transactions; and

(30) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (29) of this Section 6.03(b).

(c) For purposes of determining compliance with this Section 6.03:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (30) of Section 6.03(b) or is entitled to be incurred pursuant to Section 6.03(a), the Company, in its sole discretion, may divide and classify and may subsequently re-divide and reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or a portion thereof) in such of the above clauses or under Section 6.03(a) as determined by the Company at such time; *provided* that all Indebtedness outstanding under (a) the ABL Facility on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 6.03(b)(1) and may not be reclassified, (b) the Term Loan Credit Agreement on the Closing Date, will, at all times, be treated as incurred on the Closing Date under Section 6.03(b)(2) and may not be reclassified; and (c) the Notes Indenture and the Obligations under the 2019 Bond Financing Agreement and 2019 Note on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 6.03(b)(3) and may not be reclassified;

(2) the Company is entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 6.03(a) and Section 6.03(b), subject to the proviso to Section 6.03(c)(1);

(3) the principal amount of Indebtedness outstanding under any clause of this Section 6.03 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued pursuant to Section 6.03(b) (other than Sections 6.03(b)(1) or (15)) on the same date that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued under Section 6.03(a) or Sections 6.03(b)(1) or (15), then the Fixed Charge Coverage Ratio, or applicable leverage ratio, will be calculated with respect to such incurrence or issuance under Section 6.03(a) or Sections 6.03(b)(1) or (15) without regard to any incurrence or issuance under Section 6.03(b) (other than with respect to any incurrence or issuance under Section 6.03(b)(1) or (15)). Unless the Company elects otherwise, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock will be deemed incurred or issued first under Section 6 .03(a) or Sections 6.03(b)(1) or (15) to the extent permitted, with the balance incurred or issued under Section 6.03(b) (other than pursuant to Sections 6.03(b)(1) or (15)); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 6.03.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount, and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will, in each case, not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or Preferred Stock for purposes of this Section 6.03. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to Sections 6.03(b)(1), (2), (3), (4), (5), (13), (14) and (15) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased and (II) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the U.S. dollar-equivalent principal amount of Indebtedness, liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower U.S. dollar equivalent)); *provided* that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (1) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased *plus* (2) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (3) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Company dated such date prepared in accordance with GAAP.

The Company will not, and will not permit any Subsidiary Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is contractually subordinated in right of payment to any Indebtedness of the Company or such Subsidiary Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Bonds or such Subsidiary Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is contractually subordinated to other Indebtedness of the Company or such Subsidiary Guarantor, as the case may be.

For purposes of this Financing Agreement, (1) unsecured Indebtedness will not be deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured, (2) Indebtedness will not be deemed to be subordinated or junior to any other Indebtedness merely because it is issued or guaranteed by other obligors and (3) Secured Indebtedness will not be deemed to be subordinated or junior to any other Secured Indebtedness merely because it has a junior priority lien with respect to the same collateral.

If any Indebtedness is incurred, or Disqualified Stock or Preferred Stock is issued, in reliance on a basket measured by reference to a percentage of Consolidated EBITDA, and any refinancing thereof would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such newly incurred Indebtedness, the liquidation preference of such newly issued Disqualified Stock or the amount of such newly issued Preferred Stock does not exceed the sum of (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

Section 6.04 Asset Sales.

(a) The Company will not, and will not permit any Restricted Subsidiary to, consummate an Asset Sale, unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75.00% of the consideration for such Asset Sale, together with all other Asset Sales since the Base Date (on a cumulative basis), received by the Company or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that each of the following will be deemed to be cash or Cash Equivalents for purposes of this Section 6.04(a)(2):

(A) any liabilities (as shown on the Company's or any Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Company's or a Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Company) of the Company or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Bonds or any Subsidiary Guarantor's Guarantee of the Bonds, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Company or a Restricted Subsidiary);

(B) any securities, bonds or other obligations or assets received by the Company or a Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Company or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(C) any Designated Non-Cash Consideration received by the Company or a Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (x) $80.0 million and (y) 50% of Consolidated EBITDA of the Company for the most recently ended Test Period (calculated on a pro forma basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Company's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to subsequent changes in value;

(D) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Company or a Restricted Subsidiary), to the extent that the Company and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale; and

(E) any Investment, Capital Stock, assets, property or capital or other expenditure of the kind referred to in Section 6.04(b)(2).

(b) Within 365 days after the receipt of any Net Proceeds of any Asset Sale (as may be extended pursuant to clause (2) below, the "Asset Sale Proceeds Application Period"), the Company or a Restricted Subsidiary, at its option, may apply an amount equal to the Net Proceeds from such Asset Sale:

(1) to:

(A) if the assets subject to such Asset Sale constitute ABL Priority Collateral, prepay, repay, redeem, reduce or purchase ABL Obligations (and to correspondingly reduce commitments with respect thereto);

(B) if the assets subject to such Asset Sale constitute Fixed Asset Priority Collateral, prepay, repay, redeem, reduce or purchase Fixed Asset Pari Passu Lien Obligations on a pro rata basis; provided that the Company will reduce Obligations under the Bonds on a pro rata basis by, at its option, (i) prepaying the BFA Loan Obligations and causing a redemption of Bonds as described in Section 4.01 of the Indenture, (ii) purchasing Bonds through open-market purchases, at a price equal to (or higher than) 100.00% of the principal amount thereof, or (iii) making an offer (in accordance with the procedures set forth in Section 6.04(d) below for an Asset Sale Offer) to all Holders to purchase their Bonds on a *pro rata* basis with such other Indebtedness for no less than 100.00% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the principal amount of Bonds to be repurchased to the date of repurchase as described in Section 4.01(d) of the Indenture;

(C) subject to clause (D) below, if the assets subject to such Asset Sale do not constitute Collateral, prepay, repay, redeem, reduce or purchase Obligations under other Indebtedness of the Company or a Subsidiary Guarantor (and, if the Indebtedness prepaid, repaid, redeemed, reduced or purchased is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto);

provided that the Company shall equally and ratably prepay, repay, redeem, reduce or purchase (or offer to prepay, repay, redeem, reduce or purchase, as applicable) Fixed Asset Pari Passu Lien Obligations (and may elect to reduce other ABL Obligations) on a *pro rata* basis; *provided further*, the Company will reduce Obligations under the Bonds on a *pro rata* basis by, at its option, (i) redeeming Bonds as described under Section 4.01 of the Indenture, (ii) purchasing Bonds through open-market purchases, at a price equal to (or higher than) 100.00% of the principal amount thereof, or (iii) making an offer (in accordance with the procedures set forth in Section 6.04(d) below for an Asset Sale Offer) to all Holders to purchase their Bonds on a *pro rata* basis with such other Indebtedness for no less than 100.00% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the principal amount of Bonds to be repurchased to the date of repurchase; or

(D) If the assets subject to such Asset Sale do not constitute Collateral prepay, repay, redeem, reduce or purchase Obligations in respect of Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor, other than Obligations owed to the Company or a Restricted Subsidiary;

provided that in the case of clauses (B) and (C) above, (i) if an offer to purchase any Indebtedness of the Company or any Restricted Subsidiary is made, such amount will be deemed repaid to the extent of the amount of such offer, whether or not accepted by the Holders of such Indebtedness, for purposes of compliance with this Section 6.04 and no Net Proceeds in the amount of such offer will be deemed to exist following such offer, and (ii) if the Holder of any Indebtedness of the Company or any Restricted Subsidiary declines the repayment of such Indebtedness owed to it from such Net Proceeds, such amount will be deemed repaid to the extent of the declined Net Proceeds for the purposes of compliance with this Section 6.04 (but such Indebtedness will remain Outstanding);

(2) to make (a) an Investment in any one or more businesses; provided that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Company or any Restricted Subsidiary owning an amount of the Capital Stock of such business such that it constitutes or continues to constitute a Restricted Subsidiary, provided, further that, in the case of an Asset Sale of Collateral, the assets (including Capital Stock) constitute and are pledged as Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral) as provided under the Security Documents, (b) capital expenditures, provided, that, in the case of an Asset Sale of Collateral, such capital expenditures are made with respect to properties or assets that constitute and are pledged as Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral), (c) other expenditures made in connection with the construction or development of facilities operated or to be operated by the Company or a Restricted Subsidiary, provided, that, in the event of an Asset Sale of Collateral, such facilities constitute Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral), (d) acquisitions of properties (including fee and leasehold interests) provided, that, in the event of an Asset Sale of Collateral, such properties constitute and are pledged as Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral) or (e) acquisitions of other assets, other than securities, in the case of clauses (a) and, (d) above and this clause (e), either (i) that are or will be used or useful in a Similar Business or (ii) that replace, in whole or in part, the properties or assets that are the subject of such Asset Sale provided, that, in the event of an Asset Sale of Collateral, such other assets constitute Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral); provided further that in the case of this clause (2), a binding commitment will be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Company or a Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (or, if later, 365 days after the receipt of such Net Proceeds) (an "Acceptable Commitment") and, in the event that any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, then such Net Proceeds will constitute Excess Proceeds (as defined below); or

(3) any combination of the foregoing.

(c) Notwithstanding the foregoing, (i) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary (a "Foreign Disposition") are prohibited or delayed by applicable local law from being repatriated to the United States, the amount equal to the portion of such Net Proceeds so affected will not be required to be applied in compliance with this covenant, and such amounts may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Company hereby agreeing to use reasonable efforts to cause the applicable Foreign Subsidiary to take all actions reasonably required by the applicable local law to permit such repatriation), and if such repatriation of any of such affected Net Proceeds is permitted under the applicable local law, an amount equal to such Net Proceeds permitted to be repatriated will be applied (whether or not repatriation actually occurs) in compliance with this covenant (net of any additional taxes that are or would be payable or reserved against as a result thereof) and (ii) to the extent that the Company has determined in good faith that repatriation of any or all of the Net Proceeds of any Foreign Disposition could have a material adverse tax consequence (which for the avoidance of doubt, includes, but is not limited to, any purchase whereby doing so the Company, any Restricted Subsidiary or any of their Affiliates and/or equity partners would incur a material tax liability, including a material deemed dividend pursuant to Code Section 956 or material withholding tax), the amount equal to the Net Proceeds so affected will not be required to be applied in compliance with this covenant.

(d) The amount equal to the Net Proceeds from Asset Sales, that are not invested or applied as provided and within the time period set forth in Section 6.04(b) (it being understood that any portion of such Net Proceeds used to make an offer to purchase Bonds pursuant to Section 6.04(b)(1)(B) and (C) will be deemed to have been so applied whether or not such offer is accepted) will be deemed to constitute "Excess Proceeds". When the aggregate amount of Excess Proceeds exceeds $50.0 million, the Company will make an offer (an "Asset Sale Offer") to all Holders and, at the option of the Company, to any holders of any Pari Passu Indebtedness to purchase the maximum aggregate principal amount of the Bonds and such Pari Passu Indebtedness that is in an amount equal to at least $100,000 or an integral multiple of $5,000 in excess thereof, that may be purchased out of the Excess Proceeds at an offer price, in the case of the Bonds, in cash in an amount equal to 100.00% of the principal amount thereof (or accreted value thereof, if less), plus accrued and unpaid interest, if any (or, in respect of such Pari Passu Indebtedness, such other price, if any, as may be provided for by the terms of such Pari Passu Indebtedness), to, but excluding, the date fixed for the closing of such offer, in accordance with the procedures set forth in Section 4.06 of the Indenture (or, in respect of such Pari Passu Indebtedness, the agreement or instrument governing the terms thereof). The Company will commence an Asset Sale Offer with respect to Excess Proceeds within thirty (30) days after the date that the amount of Excess Proceeds exceeds $50.0 million by mailing or electronically delivering the notice required pursuant to Section 4.06 of the Indenture, with a copy to the Trustee, or otherwise in accordance with Applicable Procedures. The Company may satisfy the foregoing obligation with respect to any Net Proceeds from an Asset Sale by making an offer to purchase Bonds with respect to the amount of all or part of the available Net Proceeds (the "Advance Portion") prior to the expiration of the Asset Sale Proceeds Application Period with respect to the amount of all or a part of the available Net Proceeds in advance of being required to do so by this Financing Agreement (the "Advance Offer").

To the extent that the aggregate principal amount (or accreted value, as applicable) of Bonds and Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds (or in the case of an Advance Offer, the Advance Portion), the Company and its Restricted Subsidiaries may use any remaining Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) in any manner not prohibited by this Financing Agreement (any such remaining Excess Proceeds and Advance Portion amount, "Declined Excess Proceeds"). If the aggregate principal amount of Bonds and/or the Pari Passu Indebtedness surrendered in an Asset Sale Offer exceeds the amount of Excess Proceeds (or in the case of an Advance Offer, the Advance Portion), the Company will cause the Trustee to select the Bonds to be purchased in the manner described in Section 4.06 of the Indenture and the Company will select such Pari Passu Indebtedness to be purchased pursuant to the terms of such Pari Passu Indebtedness; provided that as between the Bonds and any Pari Passu Indebtedness, such purchases will be made on a pro rata basis based on the principal amount of the Bonds or such Pari Passu Indebtedness tendered with adjustments as necessary so that no Bonds or Pari Passu Indebtedness will be repurchased in part in an unauthorized denomination. Upon completion of any such Asset Sale Offer, for purposes of this provision the amount of Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) that resulted in the Asset Sale Offer or Advance Offer will be reset to zero (regardless of whether there are any remaining Excess Proceeds (or Advance Portion) upon such completion). An Asset Sale Offer or Advance Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Financing Agreement, the Bonds, the Indenture, and/or Guarantees (but the Asset Sale Offer or Advance Offer may not condition tenders on the delivery of such consents).

(e) Pending the final application of the amount of any Net Proceeds pursuant to this Section 6.04, such amount of Net Proceeds may be applied to temporarily reduce Indebtedness outstanding under a revolving credit facility, including under the ABL Facility, or otherwise invested in any manner not prohibited by this Financing Agreement.

(f) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Bonds pursuant to an Asset Sale Offer or Advance Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Financing Agreement, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations described in this Financing Agreement by virtue thereof.

(g) The Company's obligation to make an offer to repurchase the Bonds pursuant to this Section 6.04 may be waived or modified with the written consent of the Holders of a majority in principal amount of the then Outstanding Bonds.

Section 6.05 Transactions with Affiliates.

(a) The Company will not, and will not permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "Affiliate Transaction") involving aggregate payments or consideration in excess of $50.0 million, unless:

(1) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Company or the relevant Restricted Subsidiaries than those that would have been obtained at such time in a comparable transaction by the Company or such Restricted Subsidiary with a Person other than an Affiliate of the Company on an arm's-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Company or such Restricted Subsidiary from a financial point of view; and

(2) the Company delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of $100.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with Section 6.05(a)(1).

(b) Section 6.05(a) will not apply to the following:

(1) (a) transactions between or among the Company and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Company and any Parent Company; provided that such merger, consolidation or amalgamation of the Company is otherwise in compliance with the terms of this Financing Agreement and effected for a bona fide business purpose;

(2) (a) Restricted Payments permitted by Section 6.01 hereof (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition), (b) any "Permitted Investments" or any acquisition otherwise permitted by this Financing Agreement and (c) Indebtedness permitted by Section 6.03;

(3) (a) the payment of management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreements (including any unpaid management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreements and (b) the payment of indemnification and similar amounts to, and reimbursement of expenses of, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors;

(4) any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any present, future or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company that are, in each case, approved by the Company in good faith; and the provision of reasonable and customary compensation and other benefits (including the payment of any fees and compensation, benefit plan or arrangement, any health, disability or similar insurance plan), indemnities and reimbursements of expenses and employment and severance arrangements to, or on behalf of, or for the benefit of such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company;

(5) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Company, or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice;

(6) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with a Person that is not an Affiliate of the Company on an arm's-length basis;

(7) the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Closing Date);

(8) the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under the terms of, any equity holder agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and similar agreements or arrangements that it may enter into thereafter; provided that the existence of, or the performance by the Company or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will only be permitted by this clause (8) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole (as compared to the original agreement or arrangement in effect on the Closing Date);

(9) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(10) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Financing Agreement that are fair to the Company and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Company, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(11) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Company or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Company;

(12) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility and any other transaction effected in connection with a Qualified Securitization Facility or a financing related thereto;

(13) payments by the Company or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;

(14) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and repurchase and cancellation of any thereof) of the Company, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Company, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Company in good faith;

(15) (a) investments by Affiliates in securities or Indebtedness of the Company or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Company or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Company or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Company and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;

(16) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(17) payments by the Company (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Company (and any Parent Company) and its Subsidiaries; provided that in each case the amount of such payments by the Company and its Subsidiaries are permitted under Section 6.01(b)(13);

(18) any lease or sublease entered into between the Company or any Restricted Subsidiary, as lessee or sublessee, and any Affiliate of the Company, as lessor or sublessor, and transactions pursuant to that lease which lease or sublease is approved by the Board of Directors or senior management of the Company in good faith;

(19) (i) intellectual property licenses in the ordinary course of business or consistent with industry practice and (ii) intercompany intellectual property licenses and research and development agreements;

(20) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Company or any Parent Company pursuant to any equity holders agreement or registration rights agreement entered into on or after the Closing Date;

(21) transactions permitted by, and complying with Section 6.13 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Company or any Parent Company, (b) forming a holding company or (c) reincorporating the Company or BRS Finance in a new jurisdiction;

(22) transactions undertaken in good faith (as determined by the Board of Directors or senior management of the Company) for the purposes of improving the consolidated tax efficiency of the Company and its Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth in this Financing Agreement;

(23) (a) transactions with a Person that is an Affiliate of the Company (other than an Unrestricted Subsidiary) solely because the Company or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Company, any Restricted Subsidiary or any Parent Company;

(24) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Company or a Parent Company;

(25) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Company;

(26) investments by any Investor or Parent Company in securities or Indebtedness of the Company or any Subsidiary Guarantor;

(27) payments on the Bonds in accordance with this Financing Agreement and payments of Obligations under the Credit Facilities and payments in respect of Obligations under other Indebtedness, Disqualified Stock or Preferred Stock of the Company and its Subsidiaries held by Affiliates; provided that such Obligations were acquired by an Affiliate of the Company in compliance with this Financing Agreement;

(28) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and

(29) any transaction on arm's length terms with a non-Affiliate that becomes an Affiliate as a result of such Transaction.

Section 6.06 Liens.

(a) The Parent will not and the Company will not, and will not permit any Subsidiary Guarantor to, create, incur or assume any Lien (except Permitted Liens) that secures Indebtedness on any Collateral or any income or profits therefrom, or assign or convey any right to receive income therefrom.

(b) Subject to the foregoing, the Company will not, and will not permit any Restricted Subsidiary to, create, incur or assume any Lien (except Permitted Liens) that secures Obligations under any Indebtedness or any related guarantee of Indebtedness, on any asset or property of the Company or any Restricted Subsidiary that is not Collateral, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(1) in the case of Liens securing Subordinated Indebtedness, the BFA Loan Obligations and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens until such time as such Subordinated Indebtedness is no longer secured by such Liens; and

(2) in all other cases, the BFA Loan Obligations or the Guarantees are equally and ratably secured until such time as such Obligations are no longer secured by such Liens.

For purposes of determining compliance with this Section 6.06, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in the definition thereof but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, the Company will, in its sole discretion, be entitled to divide, classify or reclassify, in whole or in part, any such Lien (or any portion thereof) among one or more of such categories or clauses in any manner.

Any Lien created for the benefit of the Holders pursuant to Section 6.06(b) will be deemed automatically and unconditionally released and discharged upon the release and discharge of each of the Liens described in clauses (1) and (2) of Section 6.06(b) or upon such Liens no longer attaching to assets or property of the Company or a Restricted Subsidiary so secured.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this covenant.

Section 6.07 Company Existence. Subject to Section 6.13 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its organizational existence, and the corporate, partnership or other organizational existence of each of its Restricted Subsidiaries, in accordance with the respective Organizational Documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary; provided that the Company shall not be required to preserve the corporate, partnership or other organizational existence of its Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

Section 6.08 Offer to Repurchase Upon Change of Control.

(a) If a Change of Control occurs, unless the Company have previously or concurrently electronically delivered or mailed a redemption notice with respect to all the outstanding Bonds as described under Section 4.01 of the Indenture, the Company will make an offer to purchase all of the Bonds pursuant to the offer described below (the "Change of Control Offer") at a price in cash (the "Change of Control Payment") equal to 101.00% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date prior to such repurchase. Within sixty (60) days following any Change of Control, the Company will send notice of such Change of Control Offer electronically or by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder at such Holder's registered address, or otherwise in accordance with Applicable Procedures, with the following information:

(1) a Change of Control Offer is being made pursuant to this Section 6.08 and all Bonds properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Company;

(2) the purchase price and the purchase date, which will be no earlier than twenty (20) Business Days nor later than sixty (60) days from the date such notice is mailed or otherwise delivered (the "Change of Control Payment Date"), subject to extension (in the case where such notice is mailed or otherwise delivered prior to the occurrence of the Change of Control) in the event that the occurrence of the Change of Control is delayed;

(3) any Bond not properly tendered will remain outstanding and continue to accrue interest;

(4) unless the Company defaults in the payment of the Change of Control Payment, all Bonds accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(5) Holders electing to have any Bonds purchased pursuant to a Change of Control Offer will be required to surrender such Bonds, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Bonds completed to the Paying Agent at the address specified in the notice or otherwise in accordance with Applicable Procedures, prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) Holders will be entitled to withdraw their tendered Bonds and their election to require the Company to purchase such Bonds; provided that the Paying Agent receives, not later than the close of business on the second Business Day prior to the expiration date of the Change of Control Offer, a facsimile transmission or letter or other notice in accordance with Applicable Procedures setting forth the name of the Holder, the principal amount of Bonds tendered for purchase, and a statement that such Holder is withdrawing its tendered Bonds and its election to have such Bonds purchased;

(7) Holders whose Bonds are being purchased only in part will be issued new Bonds and such new Bonds will be equal in principal amount to the unpurchased portion of the Bonds surrendered; provided that the unpurchased portion of any Bond must be equal to at least $100,000 or any integral multiple of $5,000 in excess of $100,000;

(8) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control and describing each such condition, and, if applicable, stating that, in the Company's discretion, the Change of Control Payment Date may be delayed until such time (including more than sixty (60) days after the date the notice was mailed or delivered, including by electronic transmission) as any or all such conditions are satisfied (or waived by the Company in its sole discretion), or such purchase may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Company in its sole discretion) by the Change of Control Payment Date, or by the Change of Control Payment Date as so delayed, or such notice may be rescinded at any time in the Company's discretion if in the good faith judgment of the Company any or all of such conditions will not be satisfied. In addition, the Company may provide in such notice that payment of the purchase price and performance of the Company's obligations with respect to such purchase may be performed by another Person; and

(9) the other instructions, as determined by the Company, consistent with this Section 6.08, that a Holder must follow in order to have its Bonds repurchased.

(b) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Bonds by the Company pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Financing Agreement, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations described in this Financing Agreement by virtue thereof.

(c) On the Change of Control Payment Date, the Company will, to the extent permitted by law:

(1) accept for payment, or cause the Trustee to accept for payment, all Bonds or portions thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Bonds or portions thereof validly tendered and not validly withdrawn; and

(3) deliver, or cause to be delivered, to the Trustee (a) an Officer's Certificate to the Trustee stating that such Bonds or portions thereof have been tendered to and purchased by the Company and (b) at the Company's option, the Bonds so accepted for cancellation.

(d) The Company will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Financing Agreement applicable to a Change of Control Offer made by the Company and purchases all Bonds validly tendered and not validly withdrawn under such Change of Control Offer.

(e) A Change of Control Offer may be made in advance of a Change of Control and conditional upon such Change of Control if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Other than as specifically provided in this Section 6.08, any purchase pursuant to this Section 6.08 shall be made pursuant to applicable sections of Article IV of the Indenture, and references therein to "redeem," "redemption," "Redemption Date" and similar words shall be deemed to refer to "purchase," "repurchase," "Change of Control Payment Date" and similar words, as applicable.

(g) A Change of Control Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Financing Agreement, the Indenture, the Bonds and/or Guarantees (but the Change of Control Offer may not condition tenders on the delivery of such consents).

(h) The Company's obligation to make an offer to repurchase the Bonds pursuant to this Section 6.08 may be waived or modified (at any time, including after a Change of Control) with the written consent of the Holders of a majority in principal amount of the Bonds then outstanding.

Section 6.09 Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.

The Company will not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiary guarantees Indebtedness under the Term Loan Credit Agreement, the ABL Facility, the Notes Indenture, the 2019 Bond Financing Agreement or Capital Markets Indebtedness of the Company or any Subsidiary Guarantor), other than a Subsidiary Guarantor or an Excluded Subsidiary, to guarantee the payment of (i) any Indebtedness of the Company or BRS Finance or any Subsidiary Guarantor under the Credit Facilities incurred under Section 6.03(b)(1), (ii) the Term Loan Credit Agreement, (iii) the 2019 Bond Financing Agreement and the 2019 Note, (iv) the Notes Indenture, (v) the BFA Loan Obligations, or (vi) Capital Markets Indebtedness of the Company or any Subsidiary Guarantor, in each case, having an aggregate principal amount outstanding in excess of $50.0 million unless:

(1) such Restricted Subsidiary within 30 days executes and delivers to the Trustee a supplemental indenture to this Financing Agreement, the form of which is attached as Exhibit C hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Company or any Subsidiary Guarantor if such Indebtedness is by its express terms subordinated in right of payment to the BFA Loan Obligations or such Subsidiary Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness will be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the BFA Loan Obligations; and

(2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other applicable rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee;

provided that this Section 6.09 will not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary. The Company may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Subsidiary Guarantor to become a Subsidiary Guarantor, in which case such Subsidiary will not be required to comply with clause (1) or (2) of this Section 6.09 and such Guarantee may be released at any time in the Company's sole discretion.

Section 6.10 Suspension of Covenants.

(a) During any period of time that (i) the Bonds have an Investment Grade Rating and (ii) no Default has occurred and is continuing under this Financing Agreement (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event" and the date thereof being referred to as the "Suspension Date"), the Company and the Restricted Subsidiaries will not be subject to Section 6.01, Section 6.02, Section 6.03, Section 6.04, Section 6.05, Section 6.09 (but only with respect to any Person that would otherwise be required to become a Subsidiary Guarantor after the date of commencement of the applicable Suspension Period) and Section 6.12(a)(1)(d) hereof (collectively, the "Suspended Covenants").

(b) During a Suspension Period (as defined below), the Company may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to the second sentence of the definition of "Unrestricted Subsidiary."

(c) In the event that the Company and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Financing Agreement for any period of time as a result of the foregoing, and on any subsequent date (the "Reversion Date") the Bonds no longer have an Investment Grade Rating, then the Suspended Covenants will be reinstated and the Company and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Financing Agreement with respect to future events.

(d) The period of time between the Suspension Date and the Reversion Date is referred to in this Financing Agreement as the "Suspension Period". Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds will be reset to zero for purposes of Section 6.04.

(e) In the event of any such reinstatement, no action taken or omitted to be taken by the Company or any Restricted Subsidiary or events occurring prior to such reinstatement with respect to any of the Suspended Covenants will give rise to a Default or Event of Default under this Financing Agreement with respect to the Bonds; provided that:

(1) with respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments made will be calculated as though Section 6.01 had been in effect prior to, but not during, the Suspension Period;

(2) all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to Section 6.03(b)(4);

(3) any Affiliate Transaction entered into after the Reversion Date pursuant to an agreement entered into during any Suspension Period will be deemed to be permitted pursuant to Section 6.05(b)(7);

(4) any encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Subsidiary Guarantor to take any action described in Section 6.02(a) that becomes effective during any Suspension Period will be deemed to be permitted Section 6.02(b)(1);

(5) all Liens permitted to be created, incurred or assumed during the Suspension Period will be deemed to have been outstanding on the Closing Date, so that they are classified as permitted under clause (11) of the definition of "Permitted Liens"; and

(6) all Investments made during the Suspension Period will be deemed to have been outstanding on the Closing Date, so that they are classified as Permitted Investments permitted under clause (5) of the definition of "Permitted Investments."

(f) Notwithstanding that the Suspended Covenants may be reinstated after the Reversion Date, (i) no Default, Event of Default or breach of any kind will be deemed to exist under this Financing Agreement, the Bonds, the Indenture, or the Guarantees with respect to the Suspended Covenants, and none of the Company or any of its Restricted Subsidiaries will bear any liability for any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising during a Suspension Period, in each case, as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or, upon termination of the Suspension Period or after that time, based on any action taken or event that occurred during the Suspension Period) and (ii) following a Reversion Date, the Company and each Restricted Subsidiary will be permitted, without causing a Default or Event of Default, to honor, comply with or otherwise perform any contractual commitments or obligations arising during any Suspension Period (that were permitted to be entered into at such time) and to consummate any transactions contemplated thereby.

(g) Upon the Reversion Date, the obligation to grant Guarantees pursuant Section 6.09 will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was incurred for purposes of Section 6.09).

(h) Neither the Trustee nor the Issuer shall have any duty to (i) monitor the ratings of the Bonds, (ii) determine whether a Covenant Suspension Event or Reversion Date has occurred, or (iii) notify Holders of any of the foregoing.

Section 6.11 Limitations on Activities of the Parent.

(a) Parent shall not conduct, transact or otherwise engage in any business or operations other than (i) owning Capital Stock of the Company and operations incidental thereto, (ii) the maintenance of its legal existence and general operations (including the ability to incur fees, costs and expenses relating to such maintenance and general operations including professional fees for legal, tax and accounting issues), (iii) the performance of its obligations, including the incurrence, and performance in respect, of guarantees and other liabilities, with respect to the BFA Loan Obligations, the 2019 Bond Financing Agreement, the 2019 Note, the Notes Indenture, the Term Loan Credit Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings, (iv) any public offering of its common stock or any other issuance of its Equity Interests or any corporate transaction permitted under this Financing Agreement, (v) financing activities, including, without limitation, Credit Facilities, the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of its Subsidiaries and guaranteeing any Indebtedness, liabilities or other obligations of its Subsidiaries or Parent Companies and the performance of its obligations with respect thereto, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Parent and the Company or any direct or indirect parent of Parent and its Subsidiaries, (vii) holding any cash or property received in connection with Restricted Payments made by the Company in accordance with Section 6.01 hereof pending application thereof by Parent, (viii) providing indemnification to officers and directors, (ix) conducting, transacting or otherwise engaging in any business or operations of the type that it conducts, transacts or engages in on the Closing Date, (x) any transaction that Parent is permitted to enter into or consummate under this Financing Agreement, the 2019 Bond Financing Agreement, the Notes Indenture, the Term Loan Credit Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings and any transaction between Parent and the Company or any Restricted Subsidiary permitted under this Financing Agreement, the 2019 Bond Financing Agreement, the Notes Indenture, the Term Loan Credit Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings, (xi) subject to the following paragraph, its ownership of the Act 9 Bonds and similar bonds in connection with a Specified Sale and Lease-back Transaction, and (xii) activities incidental to the businesses or activities described in the foregoing clauses (i) through (xi); provided that, notwithstanding the foregoing, Parent shall not create or acquire (by way of amalgamation, merger, consolidation or otherwise) any material direct Subsidiaries, other than the Company or any holding company for the Company.

(b) In addition, neither Parent, as owner of the Act 9 Bonds nor any agent or designee of Parent (including Regions Bank as trustee under the Act 9 Trust Indenture), shall, without the prior written consent of the Collateral Agent:

(1) dispose of any Act 9 Bonds or its economic interests therein;

(2) enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff) under the Act 9 Bond Documents (including the enforcement of any right under any other agreement or arrangement to which Parent or its agent or designee and either the City of Osceola or the Company is a party); or

(3) commence or join with any Person (other than the Secured Parties) in commencing, or petition for or vote in favor of, any action or proceeding with respect to such rights or remedies (including in any foreclosure action or any proceeding under any Debtor Relief Laws).

Section 6.12 Merger, Amalgamation, Consolidation or Sale of All or Substantially All Assets.

(a) The Company may not consolidate, amalgamate or merge with or into or wind up into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets, in one or more related transactions, to any Person unless:

(1) (A) the Company is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company), or to which such sale, assignment, transfer, lease, conveyance or other disposition is made, is a Person organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the "Successor Company"); provided that in the case where the surviving Person is not a corporation, a Guarantor of the BFA Loan Obligations is a corporation;

(B) the Successor Company, if other than the Company expressly assumes all the obligations of the Company under this Financing Agreement, the Series 2020 Note, the Indenture, and the Security Documents pursuant to an amendment to this Financing Agreement and such other supplemental indentures, amendments or other customary documents or instruments, as applicable, and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Company, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(C) immediately after such transaction, no Default exists;

(D) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the most recently ended Test Period, either:

(i) the Company (or Successor Company, as applicable) would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; or,

(ii) the Fixed Charge Coverage Ratio for the Company (or Successor Company, as applicable) would be equal to or greater than the Fixed Charge Coverage Ratio for the Company immediately prior to such transaction;

(E) each Subsidiary Guarantor, unless it is the other party to the transactions described above, in which case Section 6.12(a)(1)(B) will apply, will have by supplemental indenture or otherwise confirmed that its Guarantee applies to such Person's obligations under this Financing Agreement, the Indenture and the Series 2020 Note and its obligations under the Security Documents shall continue to be in effect and it shall enter into such supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Company, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions; and

(F) the Company (or the Successor Company, as applicable), will have delivered to the Trustee and the Issuer an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplements and amendments, if any, comply with this Financing Agreement and, if an amendment to the Financing Agreement, a supplement to the Indenture, or any supplement to any Security Documents is required in connection with such transaction, such supplement or amendment shall require the Company (or the Successor Company, as applicable) to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(G) Collateral owned by or transferred to the Successor Company shall:

(i) continue to constitute Collateral under this Financing Agreement, the Collateral Trust Agreement, and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties; and

(iii) not be subject to any Lien other than Permitted Liens.

Notwithstanding the foregoing, failure to satisfy the requirements of Section 6.12(a)(1)(C) and (D) will not prohibit

(1) the Company consolidating, amalgamating or merging with or into or winding up into (whether or not the Company is the surviving Person), or the sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of its assets, in one or more related transactions, to Parent or a Wholly-Owned Subsidiary of Parent,

(2) the Company consolidating with, amalgamating with or merging with or into, or winding up into an Affiliate of the Company for the purpose of reincorporating the Company in the United States, any state thereof, the District of Columbia or any territory thereof, so long as the amount of Indebtedness of the Company and its Restricted Subsidiaries is not increased thereby,

(3) the Company converting into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Company or the laws of a jurisdiction in the United States (and, if such entity is not a corporation, a Guarantor of the BFA Loan Obligations is a corporation organized or existing under such laws), and

(4) the Company changing its name.

(b) Subject to Section 6.12(f), no Subsidiary Guarantor will, and the Company will not permit any Subsidiary Guarantor to, consolidate, amalgamate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(1) (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Subsidiary Guarantor or such Person, as the case may be, being herein called the "Successor Person");

(B) the Successor Person, if other than such Subsidiary Guarantor, expressly assumes all the obligations of such Subsidiary Guarantor under this Financing Agreement and such Subsidiary Guarantor's related Guarantee and the Security Documents pursuant to supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Person, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(C) immediately after such transaction, no Default exists;

(D) the Company will have delivered to the Trustee and the Issuer an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplements and amendments, if any, comply with this Financing Agreement and, if an amendment to the Financing Agreement or any supplement to any Security Documents is required in connection with such transaction, such supplement or amendment shall require the Company to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(E) Collateral owned by or transferred to the Successor Person shall:

(i) continue to constitute Collateral under this Financing Agreement, the Collateral Trust Agreement, and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties; and

(iii) not be subject to any Lien other than Permitted Liens; or

(2) the transaction is not prohibited by Section 6.04.

(c) Notwithstanding the foregoing, any Subsidiary Guarantor may (1) merge, amalgamate or consolidate with or into, wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Subsidiary Guarantor or the Company or merge, amalgamate or consolidate with or into, wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to a Restricted Subsidiary of the Company, so long as the resulting entity remains or becomes a Subsidiary Guarantor, (2) merge with an Affiliate of the Company for the purpose of reincorporating the Subsidiary Guarantor in the United States, any state thereof, the District of Columbia or any territory thereof, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor or the laws of a jurisdiction in the United States, (4) liquidate or dissolve or change its legal form if the Company determines in good faith that such action is in the best interests of the Company and is not materially disadvantageous to the guarantee of the BFA Loan Obligations, or (5) change its name.

(d) In addition, subject to Section 6.12(g), Parent will not consolidate, amalgamate or merge with or into or wind up into (whether or not Parent is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(1) Parent is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Parent) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of Parent or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (Parent or such Person, as the case may be, being herein called the "Successor Parent Guarantor");

(2) the Successor Parent Guarantor (if other than Parent) expressly assumes all the obligations of such Parent under this Financing Agreement, such Parent's related Parent Guarantee and the Security Documents pursuant to supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Parent Guarantor, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(3) immediately after such transaction, no Default exists;

(4) the Company will have delivered to the Trustee and the Issuer an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplement or amendment, if any, comply with this Financing Agreement and, if a supplement, an amendment or any supplement to any Security Documents is required in connection with such transaction, such supplement or amendment shall require Parent and the Company to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(5) Collateral owned by or transferred to the Successor Parent Guarantor shall:

(i) continue to constitute Collateral under this Financing Agreement, the Collateral Trust Agreement, and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties; and

(iii) not be subject to any Lien other than Permitted Liens.

(e) Notwithstanding the foregoing, Parent may (1) merge, amalgamate or consolidate with or into, the Company, (2) merge with an Affiliate of the Company for the purpose of reincorporating Parent in the United States, any state thereof, the District of Columbia or any territory thereof, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of Parent or the laws of a jurisdiction in the United States or (4) change its name.

(f) (1) Each Guarantee by a Subsidiary Guarantor will provide by its terms that it shall be automatically and unconditionally released and discharged and shall thereupon terminate and be of no further force and effect, and no further action by such Subsidiary Guarantor, the Company, the Collateral Agent, or the Trustee is required for the release of such Subsidiary Guarantor's Guarantee, upon:

(i) any sale, exchange, issuance, disposition or transfer (by merger, amalgamation, consolidation or otherwise) of (a) the Capital Stock of such Subsidiary Guarantor, after which the applicable Subsidiary Guarantor is no longer a Restricted Subsidiary, or (b) all or substantially all of the assets of such Subsidiary Guarantor (including to the Company or another Subsidiary Guarantor), in each case if such sale, exchange, issuance, disposition or transfer is made in compliance with the applicable provisions of this Financing Agreement ;

(ii) (a) the release or discharge of the guarantee by, or direct obligation of, such Subsidiary Guarantor of Indebtedness under the Notes Indenture, the ABL Facility, Other Pari Passu Lien Obligations or Capital Markets Indebtedness that, in any case, constitute ABL Obligations or Fixed Asset Pari Passu Lien Obligations of the Company or any Subsidiary Guarantor, or (b) the release or discharge of such other guarantee that resulted in the creation of such Guarantee, except, in each case, a discharge or release by or as a result of payment under such guarantee or direct obligation (it being understood that, in each case, a release subject to a contingent reinstatement is still a release);

(iii) (a) the designation of any Restricted Subsidiary that is a Subsidiary Guarantor as an Unrestricted Subsidiary or (b) such Subsidiary Guarantor otherwise becoming an Excluded Subsidiary (other than pursuant to clause (1) of the definition thereof); or

(iv) the discharge of the Company's obligations under this Financing Agreement in accordance with its terms; or

(v) the merger, amalgamation or consolidation of any Subsidiary Guarantor with and into the Company, BRS Finance, or a Subsidiary Guarantor that is the surviving Person in such merger, amalgamation or consolidation, or upon the liquidation of a Subsidiary Guarantor following the transfer of all or substantially all of its assets, in each case in a transaction that is not prohibited by this Financing Agreement.

(2) The Company will have the right, upon delivery of an Officer's Certificate and an Opinion of Counsel to the Trustee and Collateral Agent, to cause any Subsidiary Guarantor that has not guaranteed any Indebtedness under the Notes Indenture, the ABL Facility, Other Pari Passu Lien Obligations or any Capital Markets Indebtedness that, in any case, constitutes ABL Obligations or Fixed Asset Pari Passu Lien Obligations of any of the Company or any Subsidiary Guarantor, and is not otherwise required by the applicable terms of this Financing Agreement to provide a Guarantee, to be unconditionally released and discharged from all obligations under its Guarantee, and such Guarantee will thereupon automatically and unconditionally terminate and be discharged and of no further force or effect.

(g) The Parent Guarantee will be automatically released upon:

(1) the Company ceasing to be a Wholly-Owned Subsidiary of Parent;

(2) the Company's transfer of all or substantially all of its assets to, or merger with, an entity that is not a Wholly-Owned Subsidiary of Parent in accordance with this Section 6.12, and such transferee entity assumes Company's obligations under this Financing Agreement; or

(3) the Company's obligations under this Financing Agreement are discharged in accordance with the terms hereof.

Section 6.13 Successor Person Substituted. Upon any consolidation, amalgamation or merger, or any winding up, sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company or a Guarantor in accordance with Section 6.12 hereof, the Successor Company, Successor Person or Successor Parent Guarantor, as applicable, formed by such consolidation or amalgamation or into or with which the Company, such Subsidiary Guarantor or Parent, as applicable, is merged or to which such wind up, sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, amalgamation, merger, sale, lease, conveyance or other disposition, the provisions of this Financing Agreement, the Bonds and the Guarantees referring to the Company, such Guarantor, or Parent, as applicable, shall refer instead to the Successor Company, Successor Person or Successor Parent Guarantor, as applicable, and not to the Company, such Subsidiary Guarantor, or Parent as applicable), and may exercise every right and power of the Company, such Subsidiary Guarantor, or Parent, as applicable, under this Financing Agreement, the Bonds, the Guarantees and the Security Documents, as applicable, with the same effect as if such Successor Company, Successor Person or Successor Parent Guarantor, as applicable, had been named as the Company, a Subsidiary Guarantor or Parent, as applicable, herein, and such Subsidiary Guarantor's or Parent's Guarantee and such Subsidiary Guarantor and Parent, as applicable, will be automatically released and discharged from its obligations hereunder, and, in the case of a predecessor Company shall automatically be released from its obligations thereunder; provided that the predecessor Company shall not be relieved from the obligations under this Financing Agreement, the Series 2020 Note, the Guarantees and the Security Documents in the case of any lease.

ARTICLE VII

EVENTS OF DEFAULT

The occurrence and continuation of each of the events referred to in this Article VII shall constitute an "Event of Default":

Section 7.01 Non-Payment. The Company fails to pay (i) when and as required to be paid herein, any amount of principal relating to the Bonds, or (ii) within five (5) Business Days after the same becomes due, any interest or premium relating to the Bonds or any fees payable hereunder; or

Section 7.02 Indenture Default. Existence of an Event of Default under and as defined in Section 7.01(a) or (b) of the Indenture; or

Section 7.03 Other Defaults. Failure by the Company or any Guarantor (not specified in Section 7.01 and 7.02 above and Section 5.01 hereof) for sixty (60) days (or such longer period, not exceeding one hundred eighty (180) days, as is reasonably necessary under the circumstances to remedy such failure) after receipt of written notice given by the Trustee or the Holders of not less than thirty percent (30%) in principal amount of the then Outstanding Bonds to comply with any of its obligations, covenants or agreements (other than a default referred to in Section 7.01 or 7.02 and other than Section 5.01 hereof) contained in this Financing Agreement; or

Section 7.04 Representations and Warranties. Any representation, warranty or certification made by the Company herein shall be untrue in any material respect when made, unless such misrepresentation is capable of remedy and is remedied within thirty (30) days after the earlier of (i) the Trustee giving written notice thereof to the Company and (ii) the Company having actual knowledge of the non-compliance; or

Section 7.05 Cross-default. Default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary) or the payment of which is guaranteed by the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Series 2020 Bonds, if:

(A) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity;

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at its stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $25.0 million or more at any one time outstanding; and

(C) such default is unremedied and is not waived by the Holders of such Indebtedness prior to the acceleration of the Bonds pursuant to Section 8.02 hereof.

Section 7.06 Insolvency or Liquidation Proceeding.

(a) The Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy 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 Bankruptcy 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; or

(v) generally is not paying its debts as they become due;

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

(i) is for relief against the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary), in a proceeding in which the Company or any such Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary), is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary), or for all or substantially all of the property of the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary); or

(iii) orders the liquidation of the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that, taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary);

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

Section 7.07 Judgment. Failure by the Company or any Restricted Subsidiary that is a Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of $25.0 million (net of amounts covered by insurance policies), which final judgments remain unpaid, undischarged, unwaived and unstayed for a period of more than ninety (90) days after such judgment becomes final; or

Section 7.08 Invalidity of Bond Documents. Any material provision of the Bond Documents, taken as a whole, at any time after their 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 6.08 or 6.12) or as a result of acts or omissions by the Trustee or the Issuer which does not arise from a breach by the Company, any Guarantor or their respective Subsidiaries of its or their obligations under the Bond Documents or the satisfaction in full of all the Bonds, ceases to be in full force and effect; or the Company, any Guarantor or their respective Subsidiaries contest in writing the validity or enforceability of the Bond Documents, taken as a whole; or the Company, any Guarantor or their respective Subsidiaries denies in writing that it has any or further liability or obligation under the Bond Documents, taken as a whole (other than as a result of a repayment in full of the Bonds), or purports in writing to revoke or rescind the Bond Documents, taken as a whole; or

Section 7.09 Invalidity of Guarantees. The Guarantee of the Parent or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary) will for any reason cease to be in full force and effect except as contemplated by the terms of this Financing Agreement or be declared null and void in a final non-appealable judgment of a court of competent jurisdiction or any Financial Officer of the Parent or any Guarantor that is a Significant Subsidiary (or the responsible officers of any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary), as the case may be, denies in writing that it has any further liability under its Guarantee or gives written notice to such effect, other than by reason of the termination of this Financing Agreement or the release of any such Guarantee in accordance with this Financing Agreement; or

Section 7.10 Security.

(a) Failure by the Company or any Restricted Subsidiary to comply for sixty (60) days after notice with its agreements contained in the Security Documents except for a failure that would not be material to the Holders and would not materially affect the value of the Collateral, taken as a whole, or any security document for the benefit of the Pari Passu Lien Secured Parties or any obligation under the Collateral Trust Agreement or Intercreditor Agreement is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, other than in accordance with the terms of the relevant security documents or Collateral Trust Agreement or Intercreditor Agreement; or

(b) With respect to any Collateral having a fair market value in excess of $25.0 million, individually or in the aggregate, (A) the failure of the security interest with respect to such Collateral under the Collateral Trust Agreement, at any time, to be in full force and effect for any reason other than in accordance with their terms and the terms of this Financing Agreement, the Collateral Trust Agreement or the Intercreditor Agreement, if applicable, which failure continues for sixty (60) days or (B) the assertion by the Company or any Guarantor, in any pleading in any court of competent jurisdiction, that any such security interest is invalid or unenforceable.

ARTICLE VIII

REMEDIES UPON DEFAULT

Section 8.01 Cross-Default and Insolvency. Upon the occurrence and continuance of an Event of Default under Section 7.06, whether or not the Company has fully drawn the proceeds of the BFA Loan, the unpaid balance of the amount payable under Section 4.04(a) of this Financing Agreement shall be due and payable immediately without any further action or notice.

Section 8.02 Acceleration. Upon the occurrence and continuance of any Event of Default other than listed in Section 7.06 hereof, and subject to the provisions of the Collateral Trust Agreement and the Intercreditor Agreement, upon the direction to the Trustee of the Holders of not less than thirty percent (30%) in principal amount of the then Outstanding Bonds, whether or not the Company has fully drawn the proceeds of the BFA Loan, the Trustee shall accelerate and declare the unpaid balance of the Series 2020 Note and the amount payable under Section 4.04(a) of this Financing Agreement to be due and payable immediately, *provided*, that concurrently with or prior to such notice the unpaid principal amount of the Bonds shall have been declared to be due and payable under the Indenture. Upon any such declaration such amount shall become and shall be immediately due and payable as determined in accordance with Article VII of the Indenture.

Section 8.03 Other Remedies. Upon the occurrence and continuance of any Event of Default, the Trustee may and upon the direction to the Trustee of the Bond Holders holding not less than thirty percent (30%) in principal amount of the then Outstanding Bonds, the Trustee shall exercise any remedies, or give direction, under the Fixed Asset Pari Passu Lien Collateral Documents or the Intercreditor Agreement, or exercise any remedies otherwise available at law or in equity, in each case, subject to the provisions of the Collateral Trust Agreement and Intercreditor Agreement.

Section 8.04 Records. The Trustee may have access during normal business hours to and may inspect, examine and make copies of, the books and records and any and all data and federal income tax and other tax returns of the Company; *provided*, that the Trustee shall be obligated to protect the confidentiality of such information to the extent required by State and federal law and prevent its disclosure to the public, except the Issuer.

Section 8.05 Enforcement. Upon the occurrence and continuance of any Event of Default, the Issuer or the Trustee may take whatever other action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Financing Agreement, in each case, subject to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement; *provided*, *however*, that acceleration of the unpaid balance of the amount payable under Section 4.04(a) of this Financing Agreement is not a remedy available to the Issuer.

Section 8.06 Adverse Determination. In case the Trustee or the Issuer shall have proceeded to enforce its rights under this Financing Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Issuer, then, and in every such case, the Company, the Trustee and the Issuer shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Issuer shall continue as though no such action had been taken.

Section 8.07 Repayment Default. The Company covenants that, in case an Event of Default shall occur and be continuing with respect to the payment of any amount payable under Section 4.04(a) hereof, then, upon demand of the Trustee, the Company will pay to the Trustee the whole amount that then shall have become due and payable under said Section, with interest at the Default Rate. Interest on overdue payments required under Section 4.04(a) shall be applied as provided in the Indenture.

Section 8.08 Collection. In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law the moneys adjudged or decreed to be payable, subject in each case, to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement.

Section 8.09 Intervention. Subject to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement, in case proceedings shall be pending for the bankruptcy or for the reorganization of the Company under Debtor Relief Law or any other Law, or in case a receiver or trustee shall have been appointed for the property of the Company or in the case of any other similar judicial proceedings relative to the Company, or the creditors or property of the Company, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Financing Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Company, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its reasonable charges and expenses to the extent permitted by the Indenture. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for reasonable compensation and expenses, including reasonable expenses and fees of counsel incurred by it up to the date of such distribution.

Section 8.10 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Financing Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Financing Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees to pay and indemnify the Issuer or the Trustee for the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Issuer or the Trustee.

Section 8.11 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or now or hereafter existing at law or in equity or by statute, but subject to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or as expressly required in the Collateral Trust Agreement and Intercreditor Agreement. The Trustee and the Bond Holders shall be considered third party beneficiaries for the purposes of enforcing the rights of the Issuer and their own respective rights.

Section 8.12 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Financing Agreement should be breached by the Company and thereafter waived by the Issuer or the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE IX

PREPAYMENT

Section 9.01 Redemption of Bonds with Prepayment Moneys. By the assignment of the rights of the Issuer to the Trustee under this Financing Agreement (other than the Unassigned Issuer's Rights) as is provided in Section 4.05 hereof, the Company agrees to and shall pay or cause to be paid directly to the Trustee any amount permitted or required to be paid by it under this Article IX. All amounts paid or caused to be paid by the Company pursuant to this Article IX which are used to pay principal of, premium, if any, or interest on the Bonds, shall constitute prepaid Financing Payments and shall discharge the Company's obligation to make Financing Payments in such amount under this Financing Agreement.

Section 9.02 Optional Redemption of Bonds. The Company may deliver moneys to the Trustee in addition to Financing Payments or Additional Payments required to be made and direct the Trustee in writing to use the moneys so delivered to redeem or purchase in lieu of redemption some or all of the Bonds called for optional redemption in accordance with Section 4.01(b) of the Indenture and Section 9.01 hereof.

Section 9.03 Prepayment.

(a) The Company shall pay to the Trustee moneys sufficient to effect a purchase in lieu of redemption in accordance with the optional redemption provisions relating thereto set forth in the Indenture.

(b) Subject to the terms of this Section 9.03, the Company shall prepay the BFA Loan and cause the extraordinary mandatory redemption of the Series 2020 Bonds in accordance with Sections 4.01(c) or 4.01(f) of the Indenture.

(c) Subject to the terms of this Section 9.03, the Company shall prepay the BFA Loan and cause the purchase of the Bonds tendered in accordance with Sections 6.04 and 6.08 of this Financing Agreement.

(d) All mandatory prepayments and redemptions pursuant to Section 9.03(b) shall be applied to the prepayment of all Series 2020 Bonds to the extent such prepayment is required under the terms and conditions of the applicable Bond Documents *pro rata* among all such Series 2020 Bonds based on the outstanding principal amount of all such Series 2020 Bonds.

(e) The Company shall prepay the BFA Loan in an amount sufficient to pay the purchase price of any Bonds tendered pursuant to Section 4.06 of the Indenture.

Section 9.04 Actions by Issuer. At the request of the Company or the Trustee, the Issuer shall take all reasonable steps required of it under the applicable provisions of the Indenture or the Bonds to effect the redemption of all or a portion of the Bonds pursuant to this Article IX.

ARTICLE X

NON-LIABILITY OF ISSUER; RELIANCE BY TRUSTEE; INDEMNIFICATION

Section 10.01 Non-Liability of Issuer. The Issuer shall not be obligated to pay the principal of, purchase price or premium, if any, or interest on the Bonds, except from Trust Estate Revenues and other amounts available to the Issuer therefor under the Bond Documents, with no obligation to seek collection thereof. The Company hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Company pursuant to this Financing Agreement, together with other Trust Estate Revenues, including investment income on certain funds held by the Trustee under the Indenture and the Collateral Agent under the Collateral Trust Agreement and Intercreditor Agreement and other amounts available therefor under the Bond Documents, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of, and premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Company shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium or interest, including any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Company, the Issuer or any third party.

Section 10.02 Reliance by Trustee. Whenever reference is made in this Financing Agreement 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 Trustee 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 Trustee, it is understood that in all cases the Trustee shall be acting, giving, withholding, suffering, omitting, taking or otherwise undertaking and exercising the same (or shall not be undertaking or exercising the same) as directed. This provision is intended solely for the benefit of the Trustee 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 or confer any rights or benefits on any party hereto.

Section 10.03 Indemnification.

(a) THE COMPANY RELEASES THE ISSUER AND THE TRUSTEE FROM, AND COVENANTS AND AGREES THAT THE ISSUER AND THE TRUSTEE SHALL NOT BE LIABLE FOR, AND COVENANTS AND AGREES, TO THE EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE ISSUER AND THE TRUSTEE AND THEIR RESPECTIVE MEMBERS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST, ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, LITIGATION AND COURT COSTS, AMOUNTS PAID IN SETTLEMENT AS CONSENTED TO BY THE COMPANY AND AMOUNTS PAID TO DISCHARGE JUDGMENTS), OF EVERY CONCEIVABLE KIND, CHARACTER AND NATURE WHATSOEVER (INCLUDING FEDERAL AND STATE SECURITIES LAWS) ARISING OUT OF, RESULTING FROM OR IN ANY WAY CONNECTED WITH (I) THE PROJECT, OR THE CONDITIONS, OCCUPANCY, USE, POSSESSION, CONDUCT OR MANAGEMENT OF, OR WORK DONE IN OR ABOUT THE PROJECT OR THE OTHER FACILITIES OF THE COMPANY OR ITS AFFILIATES, OR FROM THE PLANNING, DESIGN, ACQUISITION, CONSTRUCTION, REHABILITATION, RENOVATION, IMPROVEMENT, INSTALLATION OR EQUIPPING OF THE PROJECT OR ANY PART THEREOF; (II) THE ISSUANCE, SALE OR RESALE OF ANY BONDS OR ANY CERTIFICATIONS OR REPRESENTATIONS MADE IN CONNECTION THEREWITH, THE EXECUTION AND DELIVERY OF THIS FINANCING AGREEMENT, THE INDENTURE OR THE USE OF PROCEEDS CERTIFICATE OR ANY AMENDMENT THERETO AND THE CARRYING OUT OF ANY OF THE TRANSACTIONS CONTEMPLATED BY THE BONDS, THE INDENTURE AND THIS FINANCING AGREEMENT; (III) THE TRUSTEE'S ACCEPTANCE OR ADMINISTRATION OF THE TRUSTS UNDER THE INDENTURE, OR THE EXERCISE OR PERFORMANCE OF ANY OF THEIR POWERS OR DUTIES UNDER THE INDENTURE OR THIS FINANCING AGREEMENT; (IV) ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF ANY MATERIAL FACT OR OMISSION OR ALLEGED OMISSION TO STATE A MATERIAL FACT REQUIRED TO BE STATED OR NECESSARY TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING, IN ANY OFFICIAL STATEMENT OR OTHER OFFERING CIRCULAR UTILIZED BY ANY UNDERWRITER OR PLACEMENT AGENT IN CONNECTION WITH THE SALE OF ANY BONDS OR IN ANY DISCLOSURE MADE BY THE COMPANY TO COMPLY WITH THE REQUIREMENTS OF S.E.C. RULE 15C2-12; (V) ANY VIOLATION OF ANY ENVIRONMENTAL LAWS OR THE RELEASE OF ANY HAZARDOUS MATERIALS AT, FROM, UNDER OR ON THE PROJECT OR ANY OTHER FACILITIES OF THE COMPANY OR ITS AFFILIATES; (VI) THE DEFEASANCE AND/OR REDEMPTION, IN WHOLE OR IN PART, OF THE BONDS; OR (VII) ANY DECLARATION OF TAXABILITY OF INTEREST ON THE TAX-EXEMPT BONDS, OR ALLEGATIONS THAT INTEREST ON THE TAX-EXEMPT BONDS IS TAXABLE OR ANY REGULATORY AUDIT OR INQUIRY REGARDING WHETHER INTEREST IN THE TAX-EXEMPT BONDS IS TAXABLE; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT BE REQUIRED FOR DAMAGES THAT RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF THE PARTY SEEKING SUCH INDEMNITY. THE COMPANY FURTHER COVENANTS AND AGREES, TO THE EXTENT PERMITTED BY LAW, TO PAY OR TO REIMBURSE THE ISSUER AND THE TRUSTEE AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS FOR ANY AND ALL COSTS, REASONABLE ATTORNEYS' FEES AND EXPENSES, LIABILITIES OR OTHER EXPENSES INCURRED IN CONNECTION WITH INVESTIGATING, DEFENDING AGAINST OR OTHERWISE IN CONNECTION WITH ANY SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES, EXPENSES OR ACTIONS, EXCEPT TO THE EXTENT THAT THE SAME ARISE OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ISSUER OR THE TRUSTEE OR THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS CLAIMING SUCH PAYMENT OR REIMBURSEMENT. IN NO EVENT SHALL THE TRUSTEE BE RESPONSIBLE OR LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OR ANY KIND WHATSOEVER (INCLUDING LOSS OF PROFIT), IRRESPECTIVE OF WHETHER THE TRUSTEE HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY RESIGNATION OR REMOVAL OF THE TRUSTEE, THE RETIREMENT OF THE BONDS AND THE TERMINATION OF THIS FINANCING AGREEMENT OR THE INDENTURE.

(b) THE COMPANY WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, PROTECT, INDEMNIFY AND SAVE THE ISSUER AND THE STATE AND THEIR OFFICERS, AGENTS, AND EMPLOYEES AND ANY PERSON WHO CONTROLS THE ISSUER WITHIN THE MEANING OF THE SECURITIES ACT, HARMLESS FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES OF THE ISSUER), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS IN CONNECTION WITH THE TRANSACTION CONTEMPLATED BY THIS FINANCING AGREEMENT OR ARISING FROM OR RELATED TO THE ISSUANCE OR SALE OF THE BONDS, INCLUDING:

(i) ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY IN OR UPON THE PROJECT OR GROWING OUT OF OR CONNECTED WITH THE USE, NON-USE, CONDITION OR OCCUPANCY OF THE TAX-EXEMPT PROJECT OR ANY PART THEREOF, INCLUDING ANY AND ALL ACTS OR OPERATIONS RELATING TO THE ACQUISITION OR INSTALLATION OF PROPERTY OR IMPROVEMENTS. THE FOREGOING INDEMNIFICATION OBLIGATIONS SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE COMPANY, CUSTOMERS, SUPPLIERS OR AFFILIATED ORGANIZATIONS UNDER ANY WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS;

(ii) VIOLATION OF ANY AGREEMENT, PROVISION OR CONDITION OF THIS FINANCING AGREEMENT, THE BONDS OR THE INDENTURE, EXCEPT THAT THE COMPANY SHALL NOT BE LIABLE FOR ANY INDEMNIFICATION TO AN INDEMNIFIED PARTY TO THE EXTENT THAT ANY SUCH VIOLATION RESULTS FROM THAT INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT;

(iii) VIOLATION BY THE COMPANY OF ANY CONTRACT, AGREEMENT OR RESTRICTION WHICH SHALL HAVE EXISTED AT THE COMMENCEMENT OF THE

TERM OF THIS FINANCING AGREEMENT OR SHALL HAVE BEEN APPROVED BY THE COMPANY;

(iv) VIOLATION BY THE COMPANY OF ANY LAW, ORDINANCE, COURT ORDER OR REGULATION AFFECTING THE TAX-EXEMPT PROJECT OR A PART THEREOF OR THE OWNERSHIP, OCCUPANCY OR USE OF THE TAX-EXEMPT PROJECT OR A PART THEREOF;

(v) WITH RESPECT TO THE INVESTMENT, REBATE, USE, APPLICATION OR DISBURSEMENT OF THE PROCEEDS FROM THE SALE OF THE BONDS;

(vi) ANY STATEMENT OR INFORMATION RELATING TO THE EXPENDITURE OF THE PROCEEDS OF THE BONDS CONTAINED IN THE USE OF PROCEEDS CERTIFICATE OR SIMILAR DOCUMENT FURNISHED BY THE COMPANY TO THE ISSUER OR TRUSTEE WHICH, AT THE TIME MADE, IS MISLEADING, UNTRUE OR INCORRECT IN ANY MATERIAL RESPECT; AND

(vii) ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF A MATERIAL FACT CONTAINED IN ANY OFFERING MATERIAL RELATING TO THE SALE OF THE BONDS (AS FROM TIME TO TIME AMENDED OR SUPPLEMENTED) OR ARISING OUT OF OR BASED UPON THE OMISSION OR ALLEGED OMISSION TO STATE THEREIN A MATERIAL FACT REQUIRED TO BE STATED THEREIN OR NECESSARY IN ORDER TO MAKE THE STATEMENTS THEREIN NOT MISLEADING, OR FAILURE TO PROPERLY REGISTER OR OTHERWISE QUALIFY THE SALE OF THE BONDS OR FAILURE TO COMPLY WITH ANY LICENSING OR OTHER LAW OR REGULATION WHICH WOULD AFFECT THE MANNER WHEREBY OR TO WHOM THE BONDS COULD BE SOLD.

PROMPTLY AFTER RECEIPT BY THE ISSUER OR ANY SUCH OTHER INDEMNIFIED PERSON, AS THE CASE MAY BE, OF NOTICE OF THE COMMENCEMENT OF ANY ACTION WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT AGAINST THE COMPANY UNDER THIS SECTION, SUCH PERSON WILL NOTIFY THE COMPANY IN WRITING OF THE COMMENCEMENT THEREOF, AND, SUBJECT TO THE PROVISIONS HEREINAFTER STATED, THE COMPANY SHALL ASSUME THE DEFENSE OF SUCH ACTION (INCLUDING THE EMPLOYMENT OF COUNSEL, WHO SHALL BE COUNSEL SUBJECT TO THE APPROVAL OF THE INDEMNIFIED PERSON, WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD, AND THE PAYMENT OF EXPENSES). INSOFAR AS SUCH ACTION SHALL RELATE TO ANY ALLEGED LIABILITY WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT AGAINST THE COMPANY, THE ISSUER, THE TRUSTEE OR ANY SUCH OTHER INDEMNIFIED PERSON SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL OF THEIR OWN CHOICE IN ANY SUCH ACTION AND TO PARTICIPATE IN THE DEFENSE THEREOF, AND THE REASONABLE FEES AND EXPENSES OF SUCH COUNSEL SHALL BE AT THE EXPENSE OF THE COMPANY. THE COMPANY SHALL NOT SETTLE OR COMPROMISE ANY ACTION OR PROCEEDING DEFENDED BY THE COMPANY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE AFFECTED PARTY, UNLESS SUCH SETTLEMENT OR COMPROMISE (X) INCLUDES AN UNCONDITIONAL RELEASE OF THE AFFECTED PARTY FROM ALL LIABILITY ARISING OUT OF SUCH ACTION OR PROCEEDING AND (Y) DOES NOT INCLUDE A STATEMENT OR ADMISSIONS OF FAULT, CULPABILITY OR A FAILURE TO ACT, BY OR ON BEHALF OF, THE AFFECTED PARTY. THE COMPANY SHALL NOT BE LIABLE FOR ANY SETTLEMENT OF ANY SUCH ACTION EFFECTED WITHOUT ITS CONSENT, BUT IF ANY ACTION IS SETTLED WITH THE CONSENT OF THE COMPANY OR IF THERE BE A FINAL JUDGMENT FOR THE PLAINTIFF IN ANY SUCH ACTION, THE COMPANY SHALL INDEMNIFY AND HOLD HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ANY LOSSES, CLAIMS, DAMAGES, LIABILITIES OR EXPENSES INCURRED OR SUFFERED BY REASON OF SUCH SETTLEMENT OR JUDGMENT.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE PAYMENT AND DISCHARGE OF THE BONDS. IF THE TRUSTEE RESIGNS OR IS REPLACED, THE COMPANY'S OBLIGATIONS UNDER THIS SECTION 10.03 SHALL CONTINUE FOR THE BENEFIT OF THE TRUSTEE AS WELL AS THE SUCCESSOR TRUSTEE.

ARTICLE XI

SECURITY DOCUMENTS

Section 11.01 Security Interest. On the Closing Date, the BFA Loan Obligations will be the senior secured obligations of the Company. From and after the Closing Date, pursuant to the terms hereof and of the Fixed Asset Pari Passu Lien Collateral Documents, the due and punctual payment of the principal of, premium (if any) and interest, if any, on, the BFA Loan when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium (if any) and interest, if any, on the BFA Loan and performance and payment of all other obligations of the Company and the Guarantors to the Issuer or, as a result of the assignment of the Issuer's rights hereunder, the Trustee (including, without limitation, the Guarantees), according to the terms hereunder, are secured as provided herein and in the Security Documents.

The Issuer, by its acceptance of the Series 2020 Note, acknowledges the existence and applicability of the Security Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral) as the same may be in effect or may be amended from time to time in accordance with their terms. Each of the Company and the Guarantors acknowledges and agrees that each is bound by the terms of the Security Documents, as the same may be in effect from time to time, and each affirm its agreement to perform its respective obligations thereunder in accordance therewith.

Each of the Company and the Guarantors will do or cause to be done all such acts and things as may be required by the provisions of the Security Documents, to assure and confirm to the Collateral Agent the security interest in the Collateral contemplated by the Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of the BFA Loan Obligations. Each of the Company and the Guarantors will take, and will cause the Subsidiary Guarantors to take, any and all actions reasonably required to cause the Security Documents to create and maintain, as security for the Pari Passu Lien Obligations, a valid and enforceable perfected Lien in and on all the Collateral in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties, in each case, to the extent expressly required by, and with the Lien priority required under, the Pari Passu Lien Debt Documents.

Section 11.02 Collateral Trust Agreement.

This Article XII and the provisions of each other Security Document are subject to the terms, conditions and benefits set forth in the Collateral Trust Agreement. Each of the Company and the Guarantors consents to, and agrees to be bound by, the terms of the Collateral Trust Agreement, as the same may be in effect from time to time, and to perform its obligations thereunder in accordance therewith. The Issuer, by its acceptance and assignment of the Series 2020 Note and of its right, title and interest in and to the Financing Agreement (other than Unassigned Rights), authorizes the Trustee to execute and deliver the Joinder to the Collateral Trust Agreement.

Section 11.03 Collateral Agent.

(1) As of the Closing Date, U.S. Bank National Association is acting as the Collateral Agent for the benefit of the Holders of all Pari Passu Lien Obligations outstanding from time to time.

(2) None of the Company, the Guarantors, or any of their Affiliates may act as Collateral Agent.

(3) The Collateral Agent will hold (directly or through co-trustees or agents), and will be entitled to enforce, all Liens on the Collateral created by the Pari Passu Lien Debt Documents.

(4) Except as provided in the Collateral Trust Agreement or as directed by an Act of Required Pari Passu Lien Secured Parties, or, as applicable, the Controlling Representative, in accordance with the Collateral Trust Agreement, the Collateral Agent will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person;

(ii) to foreclose upon or otherwise enforce any Lien; or

(iii) to take any other action whatsoever with regard to any or all of the Pari Passu Lien Debt Documents, the Liens created thereby or the Collateral.

The Company will deliver to the Trustee copies of all Pari Passu Lien Security Documents delivered to the Collateral Agent.

Section 11.04 Release of Liens on Collateral.

The Collateral Agent's Liens on the Collateral will be released in any one or more of the circumstances described in the Collateral Trust Agreement, the Intercreditor Agreement and the other Security Documents.

Section 11.05 Release of Liens in Respect of BFA Loan Obligations.

The Collateral Agent's Liens upon the Collateral will no longer secure the BFA Loan Obligations, and the right of the Holders of the Bonds to the benefits and proceeds of the Collateral Agent's Liens on the Collateral will terminate and be discharged:

(1) upon the prepayment of the BFA Loan Obligations, in accordance with Article IX hereof;

(2) upon defeasance of the Bonds, in accordance with Article IX of the Indenture;

(3) solely with respect to ABL Priority Collateral, if and to the extent required by the Intercreditor Agreement; and

(4) with respect to the assets of any Guarantor, at the time such Guarantor is released from its Guarantee in accordance with its terms.

Section 11.06 Equal and Ratable Sharing of Collateral by Pari Passu Lien Secured Parties.

Notwithstanding:

(1) anything to the contrary contained in the Security Documents;

(2) the time of incurrence of any Series of Pari Passu Lien Debt;

(3) the order or method of attachment or perfection of any Series of Pari Passu Lien Debt;

(4) the time or order of filing or recording of financing statements, mortgages or other documents filed or recorded to perfect any Lien upon any Collateral;

(5) the time of taking possession or control over any Collateral;

(6) that any Pari Passu Lien may not have been perfected or may be or have become subordinated, by equitable subordination or otherwise, to any other Lien; or

(7) the rules for determining priority under any law governing relative priorities of Liens:

(a) all Pari Passu Liens granted at any time by the Company or any Guarantor will secure, equally and ratably, all present and future Pari Passu Lien Obligations; and

(b) all proceeds of all Pari Passu Liens granted at any time by the Company or any Guarantor will be allocated and distributed equally and ratably on account of the Pari Passu Lien Debt and other Pari Passu Lien Obligations.

In addition, this Section 11.08 is intended for the benefit of, and shall be enforceable as a third party beneficiary by, each present and future Holder of Pari Passu Lien Obligations, each present and future Pari Passu Lien Debt Representative and the Collateral Agent as holder of Pari Passu Liens. The Pari Passu Lien Debt Representative of each future Series of Pari Passu Lien Debt shall be required to deliver a Lien sharing and priority confirmation to the Trustee and the Collateral Agent at the time of incurrence of such Series of Pari Passu Lien Debt.

Section 11.07 Relative Rights.

Nothing in this Financing Agreement or the Security Documents will:

(1) impair, as to the Company and the Issuer, the obligation of the Company to pay principal of, premium and interest on the Series 2020 Note in accordance with its terms or any other obligation of the Company or any other Grantor, including, but not limited to the payment obligations of the Company and Guarantors under this Financing Agreement;

(2) affect the relative rights of Holders of Pari Passu Indebtedness as against any other creditors of the Company or any other Grantor (other than holders of Pari Passu Liens);

(3) restrict the right of any Holder of Pari Passu Indebtedness to sue for payments that are then due and owing (but not enforce any judgment in respect thereof against any Collateral to the extent prohibited by the Collateral Trust Agreement);

(4) restrict or prevent any Holder of Pari Passu Indebtedness, the Pari Passu Collateral Agent or any Pari Passu Lien Debt Representative from exercising any of its rights or remedies upon a Default or Event of Default not restricted or prohibited by the Collateral Trust Agreement; or

(5) restrict or prevent the Collateral Agent from taking any lawful action in an Insolvency or Liquidation Proceeding not specifically restricted or prohibited by the Collateral Trust Agreement.

Section 11.08 Further Assurances.

(a) The Company and each of the other Grantors will do or cause to be done all acts and things that may be required, or that the Collateral Agent from time to time may reasonably request, to assure and confirm that the Collateral Agent holds, for the benefit of the Pari Passu Lien Secured Parties, duly created and enforceable and perfected Liens upon the Collateral, (including any property or assets that are acquired or otherwise become, or are required by any Pari Passu Lien Debt Document to become, Collateral after the date thereof), in each case, as expressly required by, and with the Lien priority required under, the Pari Passu Lien Debt Documents.

(b) The Company and each of the other Grantors will promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions as may be reasonably required, or that the Collateral Agent may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case, as expressly required by the Pari Passu Lien Debt Documents for the benefit of the Pari Passu Lien Secured Parties.

Section 11.09 Intercreditor Agreement.

The Intercreditor Agreement provides, subject to the terms thereof, for the following priority of the Fixed Asset Pari Passu Lien, on the one hand, relative to the ABL Liens, on the other hand:

(1) subject to certain limitations, any Lien on the ABL Priority Collateral to the extent securing any ABL Obligations now or hereafter held by or on behalf of the ABL Agent, or any other ABL Claimholders or any agent or trustee therefor, shall be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any Fixed Asset Pari Passu Lien Obligations; and

(2) the Fixed Asset Pari Passu Lien Obligations on the Notes Priority Collateral will be senior to the ABL Liens on the Fixed Asset Priority Collateral, and, consequently, the holders of any Fixed Asset Pari Passu Lien Obligations will be entitled to receive the proceeds from the disposition of any Fixed Asset Priority Collateral prior to the holders of any ABL Obligations.

Section 11.10 Trustee Duties.

(a) On the Closing Date, the Trustee will execute the Joinder to the Collateral Trust Agreement and will be designated as the Pari Passu Lien Debt Representative for the BFA Loan Obligations. The Trustee shall not be obligated to take any action (or to direct the Collateral Agent to take any action) under the Collateral Trust Agreement or any other Security Document for any of the Bonds without the written direction of the Holders of a majority in aggregate principal amount of the Outstanding Bonds (or the minimum consent for such action required under the Indenture) and may request the direction of the Holders of a majority in aggregate principal amount of the Outstanding Bonds (or the minimum consent for such action required under the Indenture) with respect to any such actions and, upon receipt of the written consent of the Holders of a majority in aggregate principal amount of the Outstanding Bonds (or the minimum consent for such action required under the Indenture) along with security and indemnity satisfactory to the Trustee and the Collateral Agent, shall take such actions.

(b) Neither the Trustee, the Issuer nor any of their officers, directors, employees, attorneys or agents shall be responsible or liable (i) for the legality, enforceability, effectiveness or sufficiency of any of the Security Documents, for the creation, perfection, priority, sufficiency, maintenance, renewal or protection of any Lien, or for any defect or deficiency as to any such matters, or (ii) for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so, or (iii) for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral.

(c) The rights, privileges, protections, immunities and benefits given to the Issuer under this Financing Agreement and the Trustee under the Indenture, including, without limitation, their right to be indemnified and compensated and all other rights, privileges, protections, immunities and benefits set forth in this Financing Agreement and the Indenture are extended to the Trustee when acting under the Collateral Trust Agreement, the Intercreditor Agreement (if applicable) and the other Pari Passu Lien Debt Documents on behalf of the Holders of the Bonds.

(d) The Trustee will not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens on the Collateral.

(e) Whenever an action under the Collateral Trust Agreement requires an Act of Required Pari Passu Lien Secured Parties, the Trustee, in its capacity as Pari Passu Lien Debt Representative, shall be entitled to seek the direction of Holders of a majority in aggregate principal amount of the Outstanding Bonds. Subject to the next succeeding sentence, if the minimum consent or directions of Holders of Bonds for such action required under the Financing Agreement or the Indenture are met, the Trustee shall deliver a written direction to the Collateral Agent on behalf of Holders of Bonds (i) directing such Act of Required Pari Passu Lien Secured Parties and (ii) notifying the Collateral Agent in writing of the aggregate principal amount of such Bonds consenting or directing such action (it being agreed that if the requisite percentage of consent or direction is received by the Trustee, the Trustee shall consent or direct such action on behalf of all of the then Outstanding aggregate principal amount of the Bonds), which upon request of the Collateral Agent, shall be accompanied by indemnity or security acceptable to the Collateral Agent for any losses, liability or expenses that may be incurred in connection with such direction (it being understood that the Trustee, in its individual capacity, shall not be obligated to provide such indemnity or security). Notwithstanding the foregoing, if the requested action requires the consent or direction of each Holder of the Bonds affected thereby, then the Trustee shall not deliver a direction to the Collateral Agent in such Act of Required Pari Passu Lien Secured Parties unless a unanimous consent is obtained for the Holders of the Bonds. For purposes of determining the consent or direction of Holders of the Bonds for an action under the Collateral Trust Agreement that requires an Act of Required Pari Passu Lien Secured Parties, the Bonds registered in the name of, or beneficially owned by, the Company or any Affiliate of the Company will be deemed not to be Outstanding and neither the Company nor any Affiliate of the Company will be entitled to vote such Bonds and the Company shall notify the Trustee and the Collateral Agent in writing whether any of the Bonds are owned by it or any of its Affiliates.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Notices. All notices, certificates or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by certified mail, postage prepaid, addressed to the Issuer, the Company or the Trustee, as follows, and such communications shall also be deemed sufficiently given to the Trustee if sent by facsimile with confirmed receipt.

If to the Issuer, at:

Arkansas Development Finance Authority
#1 Commerce Way, Suite 602
Little Rock, Arkansas 72202
Attn: President
Phone: (501) 682-5900
Fax: (501) 682-5939
Email: Bryan.Scoggins@arkansas.gov

with a copy to:	Arkansas Development Finance Authority #1 Commerce Way, Suite 602 Little Rock, Arkansas 72202 Attn: General Counsel and Vice President – Multi-Family Phone: (501) 682-5927 Fax: (501) 682-5939 Email: matt.barker@arkansas.gov
If to the Trustee and Paying Agent, at	U.S. Bank National Association Global Corporate Trust Services 1350 Euclid Avenue, Suite 1100 Cleveland, Ohio 44115 Attn: David Schlabach Phone: (216) 623-5987 Email: david.schlabach@usbank.com
If to the Rating Agency, at:	Moody's Investors Service 7 WTC @ 250 Greenwich Street New York, New York 10007 Attn: Michael S. Corelli, CFA Phone: (212) 553-1654 E-mail: michael.corelli@moodys.com Standard & Poor's 55 Water Street New York, New York 10007 Attn: William R. Ferara Phone: (212) 438-1776 E-mail: bill.ferara@spglobal.com
If to the Company, at	Big River Steel LLC 2027 East State Highway 198 Osceola, Arkansas 72370 Attn: Chief Executive Officer
with a copy to:	Big River Steel LLC 2027 East State Highway 198 Osceola, Arkansas 72370 Attn: Chief Financial Officer Phone: (870) 559-3122 E-mail: alevy@bigriversteel.com

and:

Big River Steel LLC
2027 East State Highway 198
Osceola, Arkansas 72370
Attn: Chief Compliance Officer
Phone: (870) 559-3123
E-mail: ltrammell@bigriversteel.com

and:

Baker & Hostetler LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, Ohio 44114
Attn: Phillip M. Callesen, Esq.
Phone: (216) 861-7884

Any notice given to the Company as provided above shall be deemed to have been given to any affiliate of the Company affected by such notice.

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Trustee. The Issuer, the Company or the Trustee may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 12.02 Severability. If any provision of this Financing Agreement shall be held or deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 12.03 Execution of Counterparts. This Financing Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided*, *however*, that for purposes of perfecting a security interest in this Financing Agreement by the Company on behalf of the Trustee under Article 9 of the Uniform Commercial Code, only the counterpart delivered, pledged, and assigned to the Trustee shall be deemed the original.

Section 12.04 Amendments, Changes and Modifications. After the initial issuance of the Series 2020 Bonds and prior to the payment in full of all Bonds, or provision for such payment having been made as provided in the Indenture, this Financing Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the terms of the Indenture.

Section 12.05 Governing Law; Venue. This Financing Agreement is governed by the laws of the State of Arkansas, without regard to the choice of law rules of the State of Arkansas. Venue for any action under this Financing Agreement to which the Issuer is a party shall lie within the district courts of the State of Arkansas, and the parties hereto consent to the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

Section 12.06 Delegation of Duties by Issuer. It is agreed that under the terms of this Financing Agreement and under the terms of the Indenture, the Issuer has delegated certain of its duties hereunder to the Company and to the Trustee. The fact of such delegation shall be deemed sufficient compliance by the Issuer to satisfy the duties so delegated and the Issuer shall not be liable in any way by reason of acts done or omitted by the Company, the Authorized Company Representative or the Trustee. The Issuer shall have the right at all times to act in reliance upon the authorization, representation or certification of the Company, the Authorized Company Representative or the Trustee.

Section 12.07 Authorized Representative. Whenever under the provisions of this Financing Agreement the approval of the Company is required or the Company is required to take some action at the request of the Issuer, such approval or such request shall be given on behalf of the Company by an Authorized Company Representative, and the Issuer and the Trustee shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken.

Section 12.08 Term of the Agreement. This Financing Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as any amounts are due hereunder (other than contingent indemnity or other obligations that survive termination of the Indenture, the Note and this Financing Agreement, but as of such date of determination are not due and payable and for which no claims have been made), any of the Bonds are outstanding or the Trustee holds any moneys under the Indenture, whichever is later. All representations and certifications by the Company as to all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Financing Agreement.

Section 12.09 Binding Effect. This Financing Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns.

Section 12.10 Survival of Fee Obligation. The right of the Issuer and the Trustee to receive any fees or be reimbursed for any expenses incurred pursuant to this Financing Agreement, and the right of the Issuer and the Trustee to be protected from any liability as provided in this Financing Agreement, shall survive the retirement of the Bonds and the termination of this Financing Agreement.

Section 12.11 Non-Recourse Liability. Satisfaction of all obligations of the Company and the Guarantors hereunder shall be had solely from the Company, the Guarantors and the Collateral. No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Company or any Guarantor or any Parent Company will have any liability for any obligations of the Company or the Guarantors under the Bonds, the Guarantees, or this Financing Agreement or for any claim based on, in respect of, or by reason of such obligations or their creation.

Section 12.12 Liability of Issuer Limited to Trust Estate. Notwithstanding anything in this Financing Agreement or in the Bonds, the Issuer shall not be required to advance any moneys derived from any source other than the Trust Estate and other assets pledged under the Indenture for any of the purposes in the Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of the Indenture. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Financing Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Company under this Financing Agreement.

The Company hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Company or the Collateral Agent to the Trustee pursuant to this Financing Agreement and the Collateral Trust Agreement and Intercreditor Agreement, together with investment income on certain funds held by the Trustee under the Indenture and the Collateral Agent under the Collateral Trust Agreement and Intercreditor Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or redemption price) and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Company shall pay such amounts in accordance with Section 4.04 hereof.

The provisions of this Section 12.12 shall be in addition to, and not in lieu of, any other provisions limiting the liability of the Issuer hereunder.

Section 12.13 Waiver of Personal Liability. No member, officer, agent or employee of the Issuer or any direct or indirect owner, director, officer, agent or employee of the Company shall be individually or personally liable for the payment of any principal (or redemption price) or interest on the Bonds or any sum hereunder or under the Indenture or be subject to any personal liability or accountability by reason of the execution and delivery of this Financing Agreement; but nothing herein contained shall relieve any such member, direct or indirect owner, director, officer, agent or employee from the performance of any official duty provided by law or by this Financing Agreement.

Section 12.14 No Constitutional Debt. It is understood and agreed by the Company and the Holders that no covenant, provisions or agreement of the Issuer herein or in the Bonds or in any other document executed by the Issuer in connection with the issuance, sale and delivery of the Bonds, or any obligation herein or therein imposed upon the Issuer or breach thereof, shall give rise to a pecuniary liability of the Issuer, its directors, officers, employees or agents or a charge against the Issuer's general credit or general fund or shall obligate the Issuer, its directors, officers, employees or agents financially in any way. No failure of the Issuer to comply with any term, condition, covenant or agreement herein or in the Indenture shall subject the Issuer, its directors, officers, employees or agents to liability for any claim for damages, costs or other financial or pecuniary charges. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit or general fund of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to the Indenture and the funds and accounts held thereunder and the application of Trust Estate Revenues therefrom and from this Financing Agreement, and from the proceeds of the Bonds, as hereinabove provided.

The Bonds constitute special, limited obligations of the Issuer, payable solely from proceeds of the Bonds, the Trust Estate Revenues pledged to the payment thereof pursuant to the Indenture and this Financing Agreement, and the funds and accounts held under and pursuant to the Indenture and pledged therefor. The Bonds, the interest thereon and any other payments or costs incident thereto do not constitute a debt or general obligation of the Issuer, the State of Arkansas or any political subdivision thereof within the meaning of any constitutional or statutory provisions. No provision in this Financing Agreement or any obligation herein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer, the State or any political subdivision thereof a pecuniary liability or a charge upon their general credit or taxing powers. No officer, director, employee, member or agent of the Issuer shall be personally liable under this Financing Agreement.

NEITHER THE STATE OF ARKANSAS NOR ANY POLITICAL CORPORATION, SUBDIVISION OR AGENCY OF THE STATE OF ARKANSAS WILL BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS, AND NEITHER THE FAITH AND CREDIT NOR ANY TAXING POWERS OF THE ISSUER, THE STATE OF ARKANSAS OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, PURCHASE PRICE FOR OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.

IT IS FURTHER UNDERSTOOD AND AGREED BY THE COMPANY AND THE HOLDERS THAT THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL INCUR NO PECUNIARY LIABILITY HEREUNDER AND SHALL NOT BE LIABLE FOR ANY EXPENSES RELATED HERETO, ALL OF WHICH THE COMPANY AGREES TO PAY. IF, NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS INCUR ANY EXPENSE, OR SUFFER ANY LOSSES, CLAIMS OR DAMAGES OR INCURS ANY LIABILITIES, THE COMPANY WILL INDEMNIFY AND HOLD HARMLESS THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS FROM THE SAME AND WILL REIMBURSE THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS IN RELATION THERETO, AND THIS COVENANT TO INDEMNIFY, HOLD HARMLESS AND REIMBURSE THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL SURVIVE PAYMENT AND DISCHARGE OF THE BONDS.

Section 12.15 Certificates of the Company. Any certificate signed by an Authorized Company Representative and delivered pursuant to the Bond Documents or any of the other related documents or to be executed and delivered in accordance with the Indenture shall be deemed a representation and warranty by the Company as to the statements made therein.

Section 12.16 Complete Agreement. The parties agree that the terms and conditions of this Financing Agreement supersede those of all previous agreements between the parties relative to the Bonds other than the Purchase Agreement, and that this Financing Agreement, together with the documents referred to in this Financing Agreement, contains the entire agreement relative to the Bonds between the parties hereto.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS FINANCING AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS FINANCING AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, the Arkansas Development Finance Authority has caused this Financing Agreement to be executed in its name and its seal to be hereunto affixed by its duly authorized officer, and each of the Company, Holdings, and BRS Finance has caused this Financing Agreement to be executed in its name all as of the date first above written.

[SEAL]

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: /s/ Bryan Scoggins

Name: Bryan Scoggins

Title: President

IN WITNESS WHEREOF, the Arkansas Development Finance Authority has caused this Financing Agreement to be executed in its name and its seal to be hereunto affixed by its duly authorized officer, and each of the Company, Holdings, and BRS Finance has caused this Financing Agreement to be executed in its name all as of the date first above written.

BIG RIVER STEEL LLC

By: /s/ David Stickler
Name: David Stickler
Title: Chief Executive Officer

BRS FINANCE CORP.

By: /s/ David Stickler
Name: David Stickler
Title: Chief Executive Officer

BRS INTERMEDIATE HOLDINGS LLC

By: /s/ David Stickler
Name: David Stickler
Title: Chief Executive Officer

[Signature Page to Bond Financing Agreement]

EXHIBIT A

Description of the Tax-Exempt Project

The "Tax- Exempt Project" consists of the acquisition, construction, improvement, development, equipping and furnishing of an approximately 700,000 square foot expansion of the existing flat-rolled steel mill, its supporting infrastructure, and related facilities that manufacture, refine and process steel located on approximately 2,000 acres in Osceola, Mississippi County, Arkansas.

The Company currently operates a technologically advanced EAF steel facility, which is commonly referred to as the Flex Mill. From its initial conception, the Company's Flex Mill facility was designed to accommodate the Tax-Exempt Project. The Tax-Exempt Project includes the addition of a second EAF, off-gas system, refining station, caster, tunnel furnace and down coiler to double production of HRC and fully utilize the Company's existing hot rolling mill, RH degasser and downstream processing lines. At initial construction and development, the operational and logistical footprint of the Company's Flex Mill was designed to support the additional machinery and equipment required for the Tax-Exempt Project and to allow for the increased flow of inbound raw materials and outbound products relating to and resulting from the Tax-Exempt Project. As a result, the majority of the Tax-Exempt Project involves the acquisition and installation of equipment without the necessity to expand or upgrade the Company's Flex Mill's existing infrastructure.

The totality of the Phase II expansion includes not only the Tax-Exempt Project, a portion of which will be financed with proceeds of the Series 2020 Bonds, but also a number of downstream processing expansion initiatives expected to increase the capabilities of the Company's finishing mill, including installing NGO FP equipment and a second coating line focused on additional automotive applications. The portions of the Phase II expansion that are not eligible for tax-exempt financing under the Code are not included within the Tax-Exempt Project and are specifically excluded therefrom.

EXHIBIT B

Form of Closed End Line of Credit Promissory Note
Series 2020

$265,000,000 September 10, 2020

BIG RIVER STEEL LLC, a Delaware limited liability company (the "Company"), for value received, hereby promises to pay to Arkansas Development Finance Authority (the "Issuer"), or assigns, on the dates specified and in the manner set forth in the Financing Agreement (as hereinafter defined), the principal sum of $265,000,000, subject to prior payment as may be required or permitted in accordance with the Indenture (as hereinafter defined) and the Financing Agreement, with interest on the unpaid principal sum, from the date hereof, until the maturity of the Series 2020 Bonds (as hereinafter defined), at the then interest rate provided in the Series 2020 Bonds, as hereinafter defined. Interest shall be payable at the interest rates payable on the Series 2020 Bonds, and the principal of, premium, if any, and interest on this Note shall be payable at the times as set forth in more detail in the Financing Agreement and the Indenture.

Payments shall be made in lawful money of the United States of America in immediately available funds on the date payment is due, at the designated corporate trust office of U.S. Bank National Association, as trustee (the "Trustee"), in Cleveland, Ohio, or at such other place as the Trustee may direct in writing.

The Issuer, by the execution of the Indenture, as hereinafter defined, and the assignment form at the foot of this Note, is assigning this Note and the payments thereon, without recourse or warranty, to the Trustee acting pursuant to the Trust Indenture dated as of September 10, 2020 (the "Indenture"), between the Issuer and the Trustee as security for the Issuer's $265,000,000 in aggregate principal amount of Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds) (the " Series 2020 Bonds"), as issued pursuant to the Indenture. Payments of principal of and interest on this Note shall be made directly to the Trustee for the account of the Issuer pursuant to such assignment and applied only to the principal of and interest on the Series 2020 Bonds. All obligations of the Company hereunder shall terminate when all sums due and to become due pursuant to this Note, and pursuant to the Indenture and the Financing Agreement, as hereinafter defined, with respect to this Note, and the Series 2020 Bonds have been paid, excluding contingent indemnity or other obligations that survive termination of this Note, or of the Indenture and the Financing Agreement with respect to this Note, but as of such date of determination are not due and payable and for which no claims have been made.

In addition to the payments of principal and interest specified in the first paragraph hereof, the Company shall also pay such additional amounts, if any, which, together with other moneys available therefor pursuant to the Indenture, may be necessary to provide for payment (i) when due (whether at maturity, by acceleration or call for redemption or otherwise) of principal and purchase price of, premium, if any, and interest on the Series 2020 Bonds, (ii) when due of all amounts payable by the Company pursuant to the Financing Agreement, and (iii) when due of all amounts payable to the Trustee pursuant to the Indenture.

The Company shall have the option or may be required to prepay this Note in whole or in part upon the terms and conditions and in the manner specified in the Bond Financing Agreement dated as of September 10, 2020 (the "Financing Agreement"), between the Issuer and each of the Company, BRS Finance Corp., and BRS Intermediate Holdings LLC.

This Note evidences a multi-advance line of credit. Subject to and upon the satisfaction of the terms and conditions of the Financing Agreement and the Indenture, the Company may request one or more draws under this Note in accordance and compliance with the Indenture. The aggregate outstanding amount of such draws shall not exceed the full principal amount of this Note.

This Note is issued pursuant to the Financing Agreement as evidence of certain of the Company's payment obligations thereunder and is entitled to the benefits and subject to the conditions thereof, including the provisions thereof that the Company's obligations thereunder and hereunder shall be unconditional. All the terms, conditions and provisions of the Financing Agreement and the applicable provisions of the Series 2020 Bonds and the Indenture are, by this reference thereto, incorporated herein as a part of this Note.

In case an Event of Default (as defined in the Financing Agreement) shall occur, the principal of and interest on this Note may be declared immediately due and payable as provided in the Financing Agreement. This Note shall be governed by, and construed in accordance with, the laws of the State of Arkansas.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS NOTE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS NOTE ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, the Company has caused this Note to be executed in its limited liability company name by its duly authorized officer, all as of the date first above written.

BIG RIVER STEEL LLC

By:
Name:
Title:

ASSIGNMENT

Arkansas Development Finance Authority (the "Issuer"), hereby irrevocably assigns, without recourse or warranty, the foregoing Note to U.S. Bank National Association, as trustee (the "Trustee") under a Trust Indenture dated as of September 10, 2020 (the "Indenture"), between the Issuer and the Trustee and hereby directs Big River Steel LLC, as the maker of the Note, to make all payments of principal of and interest thereon directly to the Trustee at its designated corporate trust office in Cleveland, Ohio, or at such other place as the Trustee may direct in writing. Such assignment is made as security for the payment of the Issuer's $265,000,000 in aggregate principal amount of Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds), issued pursuant to the Indenture.

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: _____

Name: Bryan Scoggins
Title: President

EXHIBIT C

FORM OF AMENDMENT TO FINANCING AGREEMENT
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

[ ] Amendment to Bond Financing Agreement (this "_____ Amendment"), dated as of [ ], among [ ] (the "Guaranteeing Subsidiary"), a subsidiary of Big River Steel LLC, a Delaware limited liability company (the "Company"), Arkansas Development Finance Authority, a public body corporate and politic created and existing under the Act (the "Issuer"), BRS Finance Corp., a Delaware corporation ("BRS Finance"), and BRS Intermediate Holdings LLC, a Delaware limited liability company ("Holdings" or "Parent").

W I T N E S S E T H

WHEREAS, the Company, the Issuer, BRS Finance and Holdings have heretofore executed and delivered, and the Issuer has assigned to the Trustee, a Bond Financing Agreement (as amended, supplemented or modified from time to time, the "Financing Agreement"), dated as of September 10, 2020, relating to the issuance of $265,000,000 aggregate principal amount of the Issuer's Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds) (the "Bonds") with such Bonds issued pursuant to a Trust Indenture dated as of September 10, 2020 by and between the Issuer and U.S. Bank National Association, as Trustee (the "Indenture");

WHEREAS, the Financing Agreement provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Issuer an amendment to the Financing Agreement pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's Obligations under the Bonds and the Indenture on the terms and conditions set forth herein and under the Indenture (the "Guarantee"); and

WHEREAS, pursuant to Article XI of the Indenture pursuant to which such Bonds were issued, the parties hereto may execute and deliver this _____ Amendment without the consent of the Holders of the Bonds.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. The Guaranteeing Subsidiary acknowledges that it has received and reviewed a copy of the Financing Agreement, the Indenture and all other documents it deems necessary to review in order to enter into this _____ Amendment and (i) hereby joins and becomes a party to the Financing Agreement as indicated by its signature below as a Guarantor and (ii) acknowledges and agrees to (x) be bound by the Financing Agreement as a Guarantor and (y) perform all obligations and duties required of a Guarantor pursuant to the Financing Agreement.

(3) No Recourse Against Others. No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Company, BRS Finance, or any Guarantor or any Parent Company will have any liability for any obligations of the Company or BRS Finance or the Guarantors under the Bonds, the Guarantees, the Indenture, the Financing Agreement or this _____ Amendment or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Bonds waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Bonds.

(4) Governing Law. THIS _____ AMENDMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARKANSAS.

(5) Counterparts. The parties may sign any number of copies of this _____ Amendment. Each signed copy shall be an original, but all of them together represent the same agreement. This _____ Amendment may be executed in multiple counterparts, which, when taken together, shall constitute one instrument. The exchange of copies of this _____ Amendment and of signature pages by facsimile or electronic (by '.pdf' or other format) transmissions shall constitute effective execution and delivery of this _____ Amendment as to the parties hereto and may be used in lieu of the original _____ Amendment for all purposes. Signatures of the parties hereto transmitted by facsimile or electronically (by '.pdf' or other format) shall be deemed to be their original signatures for all purposes.

(6) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(7) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this _____ Amendment or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

(8) Benefits Acknowledged. Upon execution and delivery of this _____ Amendment the Guaranteeing Subsidiary will be subject to the terms and conditions set forth in the Financing Agreement. The Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Financing Agreement and this _____ Amendment and that its obligations as a result of this _____ Amendment are knowingly made in contemplation of such benefits.

(9) Successors. All agreements of the Guaranteeing Subsidiary in this _____ Amendment shall bind its successors, except as otherwise provided in this _____ Amendment. All agreements of the other parties in this _____ Amendment shall bind their successors.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

BIG RIVER STEEL LLC

By: _____
Name:
Title:

BRS FINANCE CORP.

By: _____
Name:
Title:

BRS INTERMEDIATE HOLDINGS LLC

By: _____
Name:
Title:

[SEAL]

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: _____
Name:
Title:

Exhibit 10.2.2

Arkansas Development Finance Authority
Industrial Development Revenue Bonds
(Big River Steel Project),
Tax-Exempt Series 2020
(Green Bonds)

CERTIFICATE CONFIRMING DEFINITIONS ANNEX

The undersigned parties each hereby certify that the attached Definitions Annex is the document referenced and incorporated in the various documents, agreements and certificates relating to the above-referenced bonds.

IN TESTIMONY WHEREOF, the undersigned has hereunto set my hand as of this 10th day of September, 2020.

[Signature pages follow]

ARKANSAS DEVELOPMENT FINANCE
AUTHORITY, as Issuer

By: /s/ Bryan Scoggins
Bryan Scoggins, President

Signature Page to Certificate re Definitions Annex

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By: /s/ David A. Schlabach
Name: David A. Schlabach
Title: Vice President

Signature Page to Certificate re Definitions Annex

BIG RIVER STEEL LLC

By: /s/ David Stickler
David Stickler, Chief Executive Officer

BRS INTERMEDIATE HOLDINGS LLC

By: /s/ David Stickler
David Stickler, Chief Executive Officer

BRS FINANCE CORP.

By: /s/ David Stickler
David Stickler, Chief Executive Officer

DEFINITIONS OF TERMS

"*2019 Bond Financing Agreement*" means that certain Bond Financing Agreement dated as of May 31, 2019, by and between the Bond Issuer, the Company, Parent and BRS Finance Corp.

"*2019 Bond Indenture*" means that certain Trust Indenture dated as of May 31, 2019, by and between the Bond Issuer and the trustee for the 2019 Bonds.

"*2019 Bonds*" means the bonds designated as the "Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Series 2019" and any Additional Bonds issued pursuant to the 2019 Bond Indenture.

"*2020 Bonds*" means the bonds designated as the "Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Tax-Exempt Series 2020 (Green Bonds)."

"*ABL Agent*" means Goldman Sachs Bank USA and any successors thereof under the ABL Facility, acting as administrative agents on behalf of the ABL Facility Lenders.

"*ABL Cap Amount*" has the meaning specified in the definition of "*ABL Obligations*."

"*ABL Claimholders*" means, at any relevant time, the holders of ABL Obligations and/or the Excess ABL Obligations at that time, including the ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent under the loan documents for the ABL Facility, the ABL Hedge Provider and the ABL Cash Management Provider (as each such term is defined in the Intercreditor Agreement), and the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, any former ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent, ABL Hedge Provider and ABL Cash Management Provider to the extent that any Obligations owing to such Persons were incurred while such Persons were ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent, ABL Hedge Provider or ABL Cash Management Provider, as applicable, and such Obligations have not been paid or satisfied in full.

"*ABL Facility*" means (i) the Credit Agreement, dated as of August 23, 2017, among the Company, any Restricted Subsidiary of the Company designated as a "Borrower" or "Credit Party" thereunder, the lenders party thereto, Goldman Sachs Bank USA (or an affiliate thereof) as administrative agent, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original agents, lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness thereunder or under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof, and (ii) whether or not the facility referred to in clause (i) remains outstanding, if designated in an Officer's Certificate delivered to the Trustee as "ABL Facility" until such time as the Company subsequently delivers an Officer's Certificate to the Trustee to the effect that such facility will no longer constitute "ABL Facility", including one or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances), or (C) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

"*ABL Facility Lenders*" means the lenders or holders of Indebtedness under the ABL Facility.

"*ABL Obligations*" means, subject to clause (5) hereof, the following:

(1) the "Obligations" (as defined in the ABL Facility);

(2) all ABL Hedging Obligations (as defined in the Intercreditor Agreement);

(3) all ABL Cash Management Obligations (as defined in the Intercreditor Agreement);

(4) to the extent any payment with respect to any ABL Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any Fixed Asset Pari Passu Lien Claimholders, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of the Intercreditor Agreement and the rights and obligations of the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to be reinstated and outstanding as if such payment had not occurred. To the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the loan documents for the ABL Facility are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "ABL Obligations"; and

(5) notwithstanding the foregoing, if the sum of: (1) Indebtedness for borrowed money constituting principal outstanding under the ABL Facility and the other loan documents for the ABL Facility; plus (2) the aggregate face amount of any letters of credit issued but not reimbursed under the ABL Facility, is in excess of (i) so long as the Senior Secured Notes and the Obligations under the Term Loan Credit Agreement remain outstanding, $350,000,000 in the aggregate and (ii) after discharge in full (pursuant to a covenant defeasance, legal defeasance, upon maturity or otherwise) of the Senior Secured Notes and the Obligations under the Term Loan Credit Agreement and with the requisite consent of any other then-outstanding Pari Passu Lien Secured Parties necessary to effectuate required amendments to the Fixed Asset Pari Passu Lien Collateral Documents and the Intercreditor Agreement $500,000,000 (the "*ABL Cap Amount*"), then only that portion of such Indebtedness and such aggregate face amount of letters of credit equal to the ABL Cap Amount shall be included in ABL Obligations and interest and reimbursement obligations with respect to such Indebtedness and letters of credit shall only constitute ABL Obligations to the extent related to Indebtedness and face amounts of letters of credit included in the ABL Obligations.

"*ABL Priority Collateral*" means the following of any Grantor: (i) Accounts and chattel paper, in each case other than to the extent constituting identifiable proceeds of Fixed Asset Priority Collateral; (ii) deposit accounts, securities accounts and commodity accounts (and all cash, checks and other negotiable instruments, funds, securities, commodity contracts and other evidences of payment or other assets held therein) (but, in any event, excluding the Revenue Account (which will be used, among other things, for deposit of identifiable proceeds of Fixed Asset Priority Collateral), other Fixed Asset Accounts and the Fixed Asset Collateral Proceeds Account); (iii) all Inventory; (iv) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all documents, general intangibles, instruments, commercial tort claims, letters of credit, letter-of-credit rights and supporting obligations; provided, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any Fixed Asset Priority Collateral only that portion that evidences, governs, secures or reasonably relates to ABL Priority Collateral shall constitute ABL Priority Collateral; provided, further, that the foregoing shall not include any intellectual property; (v) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); (vi) insurance and claims against third parties to the extent arising on account of ABL Priority Collateral and all of the proceeds of and payments under all policies of business interruption insurance; and (vii) all proceeds and products of any or all of the foregoing in whatever form received, but excluding any property that is directly acquired prior to the commencement of any case or proceeding under the Bankruptcy Code or any similar Bankruptcy Law with cash proceeds of any ABL Priority Collateral and does not otherwise constitute ABL Priority Collateral upon its acquisition. Subject to certain provisions of the Intercreditor Agreement, upon a Discharge of Fixed Asset Pari Passu Lien Obligations, all Fixed Asset Priority Collateral shall become ABL Priority Collateral.

"*Accounts*" means all present and future "accounts" (as defined in Article 9 of the UCC), whether or not the UCC is applicable thereto, and shall include all rights of payment owed by an issuer of a credit or charge card.

"*Acquired Indebtedness*" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

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

"*Act*" means the Arkansas Development Finance Authority Act, Title 15, Chapter 5, Subchapters 1 through 3 of the Arkansas Code of 1987 Annotated, as amended.

"*Act 9 Bond Documents*" means (a) the Act 9 Trust Indenture, (b) the Act 9 Lease Agreement, and (c) that certain Payment in Lieu of Taxes Agreement dated as of April 30, 2015, between the City of Osceola and the Company, and all other documents executed in connection therewith, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Act 9 Bonds*" means the bonds issued to Big River Steel Holdings LLC and assigned to Parent under the Act 9 Trust Indenture pursuant to Amendment 65 to the Constitution of State of Arkansas and Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, codified as Ark. Code Ann. Sections 14,164-201 *et seq*. as amended.

"*Act 9 Lease Agreement*" means that certain Lease Agreement dated as of April 30, 2015, between the City of Osceola and the Company, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Act 9 Trust Indenture*" means that certain Trust Indenture dated as of April 30, 2015, between the City of Osceola, as issuer, and Regions Bank, as trustee for Parent as the owner of the Act 9 Bonds issued thereunder, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Act of Required Pari Passu Lien Secured Parties*" means, as to any matter,

(1) from and after August 23, 2017, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the Required Term Lenders until the earliest of (x) the Discharge of Credit Agreement Obligations (as such term is defined in the Collateral Trust Agreement), (y) the Outstanding Term Loan Threshold Date (as such term is defined in the Collateral Trust Agreement) and (z) the First Specified Pari Passu Lien Debt Threshold Date (the date on which the earliest of the foregoing clauses (1)(x), (1)(y) and (1)(z) occurs, the "*First Controlling Change Date*");

(2) from and after the First Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the Required Delayed Draw Term Lenders until the earlier of (x) the Discharge of Specified Pari Passu Lien Debt Obligations and (y) the Second Specified Pari Passu Lien Debt Threshold Date (the date on which the earlier of the foregoing clauses (2)(x) and (2)(y) occurs, the "Second Controlling Change Date"); and

(3) from and after the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the holders of (or the Pari Passu Lien Debt Representatives representing the holders of) more than 50% of the aggregate outstanding principal amount of Pari Passu Lien Debt; provided, however, that if at any time prior to the Discharge of Pari Passu Lien Obligations the only remaining Pari Passu Lien Obligations are Secured Hedging Obligations, then the term "Act of Required Pari Passu Lien Secured Parties" will mean a direction in writing delivered by the Hedge Bank with the largest amount of Secured Hedging Obligations owed to it. For purposes of this definition, (a) Pari Passu Lien Debt registered in the name of, or beneficially owned by, the Company or any Affiliate of the Company will be deemed not to be outstanding and neither the Company nor any Affiliate of the Company will be entitled to vote such Pari Passu Lien Debt and (b) votes will be determined as described in the Collateral Trust Agreement and in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—C*ollateral Trust Agreement—Voting*".

"*Additional Bonds*" means Bonds issued under Section 2.05 of the Bond Indenture.

"*Additional Pari Passu Lien Debt*" has the meaning specified in clause (1) of the definition of "*Additional Pari Passu Lien Debt Designation*".

"*Additional Pari Passu Lien Debt Designation*" means a designation under the Collateral Trust Agreement pursuant to which the Company designates as Pari Passu Lien Debt thereunder any Funded Debt incurred by the Company or any Subsidiary Guarantor after August 23, 2017 in accordance with the terms of all applicable Pari Passu Lien Debt Documents that states that:

(1) the Company or such other Grantor intends to incur additional Pari Passu Lien Debt ("*Additional Pari Passu Lien Debt*") which will be Pari Passu Lien Debt not prohibited by any Pari Passu Lien Debt Document to be incurred and secured by a Pari Passu Lien equally and ratably with all previously existing and future Pari Passu Lien Debt;

(2) specifies the name and address of the Pari Passu Lien Debt Representative for such Additional Pari Passu Lien Debt for purposes of the Collateral Trust Agreement;

(3) states that the Company and each other Grantor has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant filings and recordations to ensure that the Additional Pari Passu Lien Debt is secured by the Collateral in accordance with the Pari Passu Lien Security Documents;

(4) attaches a reaffirmation agreement contemplated by the Collateral Trust Agreement, which has been duly executed by the Company and each other Grantor; and

(5) states that the Company has caused a copy of the Additional Pari Passu Lien Debt Designation and the related Collateral Trust Joinder (if any) to be delivered to each then existing Pari Passu Lien Debt Representative.

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

"*After-Acquired Property*" means (i) equipment or fixtures acquired by the Company or any other Grantor after August 23, 2017 which constitute accretions, additions or technological upgrades to the equipment or fixtures that form part of the Fixed Asset Priority Collateral, (ii) any equipment, fixtures and real estate of the Company or any other Grantor acquired after August 23, 2017, (iii) all of the Capital Stock acquired after August 23, 2017 and held by the Company or any other Grantor (other than any Capital Stock that is an Excluded Asset), (iv) substantially all of the other tangible and intangible assets of the Company and each Grantor acquired after August 23, 2017 and

(v) any asset or other property, whether personal, real or other, that was designated as an "Excluded Asset," which asset or other property ceases to constitute an Excluded Asset.

"*Anti-Corruption Law"* means any provision of the Foreign Corrupt Practices Act of 1977, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption law.

"*Applicable Collateral Agents*" has the meaning given to such term in the Intercreditor Agreement and in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement".

"*Applicable Procedures*" means, with respect to any selection of Bonds, the rules and procedures of the Depository, Euroclear and Clearstream that apply to such selection, transfer or exchange.

"*Applicable Tax-Exempt Municipal Bond Rate*" means the Comparable AAA General Obligations yield curve rate for the September 1, 2027 published by Municipal Market Data ("MMD") five business days prior to the date fixed for redemption. If no such yield curve rate is established for the applicable year, the Comparable AAA General Obligations yield curve rate for the two published years most closely corresponding to such year will be determined, and the Applicable Tax-Exempt Municipal Bond Rate will be interpolated or extrapolated from those yield curves rates on a straight-line basis. This rate is made available by MMD and is available to subscribers at: www.tm3.com. In calculating the Applicable Tax-Exempt Municipal Bond Rate, if MMD no longer publishes the Comparable AAA General Obligations yield curve rate, then the Applicable Tax-Exempt Municipal Bond Rate will equal the Municipal Market Advisors Consensus Municipal yield curve rate for the applicable year, or will be based on a comparable industry standard. The Consensus Municipal yield curve rates are made available daily by Municipal Market Analytics, Inc. through Bloomberg (Command Prompt: CMMA) and if Municipal Market Analytics, Inc. no longer publishes the Consensus Municipal yield curve rate, then the Applicable-Tax Exempt Municipal Bond Rate will be determined by the Quotation Agent, based upon the rate per annum equal to the semiannual equivalent yield to maturity of those tax-exempt general obligation bonds rated in the highest rating category by Moody's and S&P with a maturity date equal to September 1, 2027 and having characteristics (other than the rating) most comparable to such 2020 Bonds, in the judgement of the Quotation Agent.

"*Asset Sale*" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction, other than a Specified Sale and Lease-Back Transaction) of the Company or any Restricted Subsidiary (each referred to in this definition as a "*disposition*"); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock") of any Restricted Subsidiary (other than to the Company or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than: (a) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course, (iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Company), (iv) dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business and (v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Company and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course; (b) the disposition of all or substantially all of the assets of the Company or a Restricted Subsidiary in a manner permitted pursuant to the provisions of 6.12 of the Bond Financing Agreement (other than under Section 6.12(b)(2)) and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Covenants of the Company—Merger, Amalgamation, Consolidation or Sale of All or Substantially All Assets" (other than under clause (2) of the fourth paragraph thereof) or any disposition that constitutes a Change of Control; (c) any disposition in connection with the making of any Restricted Payment that is permitted to be made pursuant to Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments" or any Permitted Investment or any acquisition otherwise permitted by the Bond Financing Agreement; (d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value for any individual transaction or series of related transactions of less than the greater of $30.0 million and 20.0% of Consolidated EBITDA of the Company for the most recently ended Test Period (calculated on a *pro forma* basis) determined at the time of the making of such disposition; (e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary (and in the event such disposition of property or assets or issuance of securities was made by the Company or a Guarantor, such disposition of property or assets or issuance of securities is made to a Guarantor); (f) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business; (g) (i) the lease or sub-lease, assignment, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice, (ii) the lease or sub-lease, assignment, license or sublicense of, or co-location arrangement relating to, any real or other property of the Company and its Restricted Subsidiaries for the purpose of facilitating the use by other Persons of such real or other property in connection with the conduct by such other Persons (or their affiliates) of a Similar Business and, in connection with which, the Company or a Restricted Subsidiary or a Parent Company enters into a contract or arrangement with such other Person for the sale or acquisition of products or services, and (iii) the exercise of termination rights with respect to any lease, sub-lease, assignment, license or sublicense or other agreement or arrangement; (h) any issuance, disposition or sale of Equity Interests in, or Indebtedness, assets or other securities of, an Unrestricted Subsidiary; (i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including, for the avoidance of doubt, any casualty event) with respect to assets or the granting of Liens not prohibited by the Bond Financing Agreement; (j) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility, sales of receivables in connection with Receivables Financing Transactions or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings; (k) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after August 23, 2017, including asset securitizations permitted by the Bond Financing Agreement; (l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof; (m) the licensing or sub- licensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice; (n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice; (o) the unwinding of any Hedging Obligations; (p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements; (q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which in the reasonable good faith determination of the Company are not material to the conduct of the business of the Company and its Restricted Subsidiaries taken as a whole; (r) the granting of a Lien that is permitted under Section 6.06 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT— Bond Financing Agreement—Covenants of the Company—Liens;" (s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable law; (t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted under the Bond Financing Agreement, which assets are not used or useful in the principal business of the Company and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Company to consummate any acquisition permitted under the Bond Financing Agreement; (u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of the same or similar replacement property; (v) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction; and (w) dispositions of property in connection with any Specified Sale and Lease-Back Transaction.

"*Assigned Agreements*" shall mean any agreement, contract or record to which any Grantor is now or may hereafter become a party, in each case as such agreements, contracts or other records may be amended, amended and restated, supplemented or otherwise modified from time to time.

"*Attributable Indebtedness*" means, on any date, in respect of any Capitalized Lease Obligation or Sale and Lease-Back Transaction of any Person, (i) in the case of a Capitalized Lease Obligation or a Sale and Lease-Back Transaction that constitutes a Capitalized Lease Obligation, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP or (ii) in the case of a Sale and Lease-Back Transaction that does not constitute a Capitalized Lease Obligation, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Lease-Back Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended determined in accordance with GAAP.

"*Authenticating Agent*" means the Trustee and the Registrar for the Bonds and any bank, trust company or other Person designated as an Authenticating Agent for the Bonds by or in accordance with Section 6.13 of the Bond Indenture.

"*Authorized Company Representative*" means the person or persons designated at the time to act on behalf of the Company by written instrument furnished to the Issuer and the Trustee, containing the specimen signature of such person or persons and signed by any officer of the Company. Such instrument may designate an alternate or alternates.

"*Authorized Denominations*" shall mean, with respect to the 2020 Bonds, $100,000 or any integral multiple of $5,000 in excess thereof.

"*Authorized Issuer Representative*" means the Chairman, Vice Chairman, President or any Vice President of the Bond Issuer, or any other person at the time designated to act on behalf of the Bond Issuer by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed by the Chairman, Vice Chairman, President or any Vice President of the Bond Issuer. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized Issuer Representative.

"*Bankruptcy Code*" means Title 11 of the United States Code.

"*Bankruptcy Law*" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors, including for greater certainty, any such law in respect of corporation arrangement, reorganization or scheme, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, winding-up, or arrangement (including corporate statutes).

"*Base Date*" has the meaning ascribed to such term in Section 6.01(a) of the Bond Financing Agreement.

"*Beneficial Owner*" means, with respect to the Bonds, a Person owning a Beneficial Ownership Interest therein, which has provided written notice to the Trustee of its Beneficial Ownership Interest of such Bond.

"*Beneficial Ownership Interest*" means the right of the owner to receive for its own account, held directly or indirectly with a Direct Participant or Indirect Participant, payments made by the Bond Issuer with respect to a specified principal amount of Bonds with a specified CUSIP held by the Depository under a Book-Entry System pursuant to the Bond Indenture.

"*BFA Loan*" means the loan of the proceeds of the Bonds from the Bond Issuer to the Company, pursuant to the Bond Financing Agreement, and evidenced by the Series 2020 Note.

"*BFA Loan Obligations*" means the obligations of the Company and the Guarantors under the Bond Financing Agreement and the Series 2020 Note.

"*Board of Directors*" means, for any Person, the board of directors, board of managers or other governing body of such Person or, if such Person does not have such a board of directors, board of managers or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors.

"*Bond Counsel*" means collectively, Mitchell, Williams, Selig, Gates & Woodyard, PLLC, and Ballard Spahr LLP, or any other firm of attorneys (other than an employee of the Company) satisfactory to the Bond Issuer and nationally recognized as experienced in matters relating to the tax-exempt status of obligations issued by or on behalf of states and political subdivisions.

"*Bond Documents*" means the Bond Indenture, the Bond Financing Agreement, the Purchase Agreement, the Series 2020 Note and the Fixed Asset Pari Passu Lien Collateral Documents.

"Bond Financing Agreement" means that certain Bond Financing Agreement by and between the Bond Issuer, the Company, Parent and BRS Finance Corp. to be dated as of the Closing Date.

"*Bond Financing Payments*" means payments by the Company pursuant to the Bond Financing Agreement towards the principal of, premium, if any, and interest on the Bonds and related expenses.

"*Bondholder*" "*Holder*" or "*Holder of a Bond*" at any time, means the Person in whose name a Bond is registered on the Register pursuant to the Bond Indenture.

"Bond Indenture" means that certain Trust Indenture to be dated as of the Closing Date, by and between the Bond Issuer and the Trustee.

"*Bond Issuer*" means the Arkansas Development Finance Authority, a public body corporate and politic created and existing under the Act together with its successors and assigns.

"Bond Issuer Board" means the Board of Directors of the Bond Issuer.

"*Bond Resolution*" means (a) when used with reference to the 2020 Bonds, the resolution of the Bond Issuer Board providing for their issuance and approving the Bond Financing Agreement, the Bond Indenture and the Purchase Agreement and related matters; and (b) when used with reference to an issue of Additional Bonds, the resolution of the Bond Issuer Board providing for the issuance of the Additional Bonds and approving any amendment or supplement to the Bond Financing Agreement, any Supplemental Indenture and related matters.

"*Bonds*" means the 2020 Bonds and any Additional Bonds.

"*Book-Entry Form*" or "*Book-Entry System*" means a form or system, as applicable, under which (a) the Beneficial Ownership Interests may be transferred only through a book-entry-only system and (b) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical Bond certificates "*immobilized*" in the custody of the Depository or the Trustee.

"*Borrower Bonds*" mean any Bonds of which ownership is registered in the name of the Company or any Affiliate of Company.

"*Broker-Dealer Regulated Subsidiary*" means any Subsidiary of the Company that is registered as a broker-dealer under the Exchange Act or any other applicable laws requiring such registration.

"*BRS Finance*" means BRS Finance Corp., a Delaware corporation.

"*BRS Intermediate*" means BRS Intermediate Holdings LLC, a Delaware limited liability company.

"*Business Day*" means any day that is not a Legal Holiday.

"*Capex Equity*" means Capital Stock of the Company issued to Parent, the Net Cash Proceeds from the issuance of which, and other cash equity capital contributions by Parent to the Company, the Net Cash Proceeds of which, are used for purposes of Expansion Capital Expenditures.

"*Capital Expenditures"* means all expenditures made by the Company, a Subsidiary Guarantor or a Restricted Subsidiary, as applicable, for the acquisition, leasing (pursuant to a capital lease of fixed or capital assets), construction, development or improvement of assets or additions to equipment (including replacement, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of the Company and its Restricted Subsidiaries.

"*Capital Markets Indebtedness"* means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (a) a public offering registered under the Securities Act, (b) a private placement to institutional investors that is resold in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC or

(c) a private placement to institutional investors. For the avoidance of doubt, the term "Capital Markets Indebtedness" does not include any Indebtedness under commercial bank facilities, Indebtedness incurred in connection with a Sale and Lease-Back Transaction, Indebtedness incurred in the ordinary course of business of the Company, Capitalized Lease Obligations or recourse transfer of any financial asset or any other type of Indebtedness incurred in a manner not customarily viewed as a "securities offering" but does include the obligations of the Company pursuant to the 2019 Bond Financing Agreement and the Bond Financing Agreement.

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock or shares in the capital of such corporation;

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

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

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person;

but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"*Capitalized Lease Obligation*" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP; *provided* that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "*ASU*") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of the Bond Financing Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to the Bond Financing Agreement and the Continuing Disclosure Agreement.

"*Capitalized Software Expenditures*" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

"*Captive Insurance Subsidiary*" means any Subsidiary of the Company that is subject to regulation as an insurance company (or any Subsidiary thereof).

"*Cash Equivalents*" means:

(1) United States dollars;

(2) (a) Euros, Yen, Canadian Dollars, Pounds Sterling or any national currency of any participating member state of the EMU; or (b) in the case of any Foreign Subsidiary or any jurisdiction in which the Company or its Restricted Subsidiaries conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the United States dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company) and, in each case, maturing within 36 months after the date of acquisition;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case, having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph. Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above; *provided* that such amounts, except amounts used to pay non-dollar denominated obligations of the Company or any Restricted Subsidiary in the ordinary course of business, are converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"*Cash Management Agreement*" means any agreement entered into from time to time by the Company or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"*Cash Management Obligations*" means Obligations in connection with, or in respect of, Cash Management Services.

"*Cash Management Services*" means (a) commercial credit cards, employee credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft protections, automatic clearing house arrangements and fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services, (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements and (e) any other related services or activities.

"*CFC*" means a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"*CFC Holdco*" means a Domestic Subsidiary substantially all of whose assets consists (directly or indirectly through disregarded entities) of the Capital Stock or indebtedness (in the case of indebtedness, to the extent such indebtedness is treated as equity for U.S. federal income tax purposes) of one or more Subsidiaries that are CFCs.

"*Change of Control*" means the occurrence of any of the following after the Closing Date:

(1) the sale, lease, transfer, conveyance or other disposition in one or a series of related transactions (other than by merger, consolidation, amalgamation or business combination) of all or substantially all of the assets of Parent or the Company and its Subsidiaries, in each case, taken as a whole, to any Person other than one or more Permitted Holders;

(2) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of Equity Interests of the Company representing more than fifty percent (50.00%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Equity Interests held by any Permitted Holder will be excluded), unless the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of the Company; or

(3) the Company ceases to be directly wholly-owned by Parent.

"*Change of Control Offer*" means an electronically delivered or mailed redemption notice with respect to all Outstanding Bonds pursuant to the terms of the Bond Indenture pursuant to which the Company will make an offer to purchase all of the 2020 Bonds as further described in Section 6.08 of the Bond Financing Agreement and in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Offer to Repurchase Upon Change of Control."

"*Clearstream*" means Clearstream Banking, Société Anonyme and its successors.

"*Closing Date*" means, with respect to the 2020 Bonds, the date of delivery of and payment for the 2020 Bonds, being September 10, 2020, and with respect to any Additional Bonds, the date of their delivery and payment.

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

"*Collateral*" means all the assets and properties subject to the Liens created by the Security Documents.

"*Collateral Agent*" means U.S. Bank National Association, in its capacity as the collateral agent under the Collateral Trust Agreement.

"*Collateral Trust Agreement*" means the Collateral Trust Agreement dated as of August 23, 2017, among the Collateral Agent, Goldman Sachs Bank USA, as administrative agent, U.S. Bank National Association, as trustee under the Notes Indenture, the trustee for the 2019 Bonds, the Trustee, the Commercial Building Lender, the Equipment Lessor, and each other Pari Passu Debt Representative with respect to Pari Passu Lien Obligations from time to time party thereto and the Loan Parties under the Term Loan Credit Agreement.

"*Collateral Trust Joinder*" means as to any Series of Pari Passu Lien Debt, the written agreement of a representative of holders of such Series of Pari Passu Lien Debt, as set forth in the indenture, credit agreement or other agreement governing such Series of Pari Passu Lien Debt, whereby such Person agrees to become party as a Pari Passu Lien Debt Representative under the Collateral Trust Agreement and whereby such Person, on behalf of itself and each holder of Pari Passu Lien Obligations in respect of the Series of Pari Passu Lien Debt for which such Person is acting as Pari Passu Lien Debt Representative agrees, for the enforceable benefit of all holders of each current and future Series of Pari Passu Lien Debt, each current and future Pari Passu Lien Debt Representative, and each current and future Pari Passu Lien Secured Party and Pari Passu Lien Obligations and as a condition to being treated as Pari Passu Lien Debt under the Collateral Trust Agreement that:

(1) all Pari Passu Lien Obligations will be and are secured equally and ratably by all Pari Passu Liens at any time granted by the Company or any other Grantor to secure any Pari Passu Lien Obligations, whether or not upon property otherwise constituting collateral for such Pari Passu Lien Obligations, and that all such Pari Passu Liens will be enforceable by the Collateral Agent for the benefit of all Pari Passu Lien Secured Party equally and ratably; provided, however, that notwithstanding the foregoing, this provision will not be violated with respect to any particular Collateral and any particular Series of Pari Passu Lien Debt if the Pari Passu Lien Debt Documents in respect thereof prohibit the applicable Pari Passu Lien Debt Representative from accepting the benefit of a Pari Passu Lien on any particular asset or property or such Pari Passu Lien Debt Representative otherwise expressly declines in writing to accept the benefit of a Pari Passu Lien on such asset or property, provided that notwithstanding the foregoing, all amounts on deposit in the Specified Accounts (as such term is defined in the Collateral Trust Agreement) or credited thereto shall be for the benefit of all Pari Passu Lien Secured Parties; provided further that funds in the various debt service reserve accounts and the construction account shall be for the exclusive benefit of specified creditors until those creditors are paid in full, and otherwise the funds on deposit in the Specified Accounts shall be applied to the Pari Passu Lien Obligations in the order provided in, and otherwise in accordance with, the Collateral Trust Agreement and/or the Deposit Agreement, as applicable;

(2) such Person and each holder of Pari Passu Lien Obligations in respect of the Series of Pari Passu Lien Debt for which the undersigned is acting as Pari Passu Lien Debt Representative are bound by the provisions of the Collateral Trust Agreement, including the provisions relating to the ranking of Pari Passu Liens and the order of application of proceeds from the enforcement of Pari Passu Liens; and

(3) the Collateral Agent shall perform its obligations under the Collateral Trust Agreement and the other Pari Passu Lien Debt Documents.

"*Commercial Building Collateral*" means such properties and assets of the Company as are specified in the Commercial Building Security Documents on which Commercial Building Liens have been granted, or purported to be granted.

"*Commercial Building Lender*" means First Security Bank, an Arkansas banking corporation.

"*Commercial Building Lender Obligations*" means all Obligations under the Commercial Building Loan Agreement, including with respect to the Commercial Building Loan.

"*Commercial Building Lien*" means a Lien granted, or purported to be granted, by a Commercial Building Security Document to the Commercial Building Lender to secure Commercial Building Lender Obligations prior to August 23, 2017.

"*Commercial Building Loan*" means the loan made by the Commercial Building Lender under the Commercial Building Loan Agreement.

"*Commercial Building Loan Agreement*" means that certain Loan Agreement, dated as of September 8, 2016, by and between the Company and the Commercial Building Lender, as the same has been amended, supplemented or otherwise modified prior to August 23, 2017 and as in effect on such date, and as may be further amended, supplemented or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Commercial Building Loan Proportion by Value*" means the net proceeds of a Going Concern Sale, *multiplied* by the proportion of (x) $20,316,283, which is the amount of Project Costs expended by the Company to acquire and construct the Commercial Building Collateral, *divided* by (y) $1,330,000,000, which is the total amount of Project Costs incurred by the Company as of August 23, 2017; *provided* that such amount will not exceed the total amount of the outstanding and unpaid Commercial Building Lender Obligations.

"*Commercial Building Security Documents*" means the Leasehold Mortgage, Assignment of Purchase Option and Security Agreement from the Company to the Commercial Building Lender, made January 31, 2017 by the Company, as mortgagor, to the Commercial Building Lender, as mortgagee, the Amended and Restated Recognition of Leasehold and Security Interest, Nondisturbance and Attornment Agreement made November 17, 2016 among the Company, the City of Osceola, Arkansas, the Equipment Lessor and the Commercial Building Lender, the Easement Agreement, dated as of January 31, 2017, among City of Osceola, as grantor, Commercial Building Lender and the Company, and other grants or transfers for security executed and delivered by the Company creating or perfecting (or purporting to create or perfect) a Lien on properties and assets of the Company in favor of the Commercial Building Lender, in each case as the same has been amended, supplemented or otherwise modified prior to August 23, 2017 and in effect on such date and as may be further amended, supplemented or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Common Collateral*" means all of the assets and property of the Company or any Guarantor, whether real, personal or mixed, in or upon which Liens are granted, or required to be granted, to secure both the ABL Obligations and the Fixed Asset Pari Passu Lien Obligations, including any property subject to Liens granted pursuant to the first and second paragraphs described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement—*Insolvency or Liquidation Proceeding*" to secure both the ABL Obligations and the Fixed Asset Pari Passu Lien Obligations.

"*Company"* means Big River Steel LLC, a Delaware limited liability company, and its successors and assigns.

"*Consolidated Depreciation and Amortization Expense*" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including, the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and the amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"*Consolidated EBITDA*" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h), (l) and (m)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period: (a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers' acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of "Consolidated Interest Expense" pursuant to the definition thereof; *plus* (b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise and similar taxes, and foreign withholding taxes paid or accrued during such period (including any other levies that replace or are intended to be in lieu of such taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of "Consolidated Net Income", and any payments to a Parent Company in respect of such taxes permitted to be made under the Bond Financing Agreement; *plus* (c) Consolidated Depreciation and Amortization Expense for such period; *plus* (d) any other non-cash charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (A) the Company may determine not to add back such non-cash charge in the current period and (B) to the extent the Company does decide to add back such non-cash charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Closing Date, in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus* (e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation; plus* (f) (i) the amount of board of director fees and any management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreements or otherwise to the extent permitted under the Bond Financing Agreement and (ii) the amount of payments made to optionholders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Companies, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted under the Bond Financing Agreement; *plus* (g) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; *plus* (h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus* (i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or Net Cash Proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); *plus* (j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of *FASB Accounting Standards Codification Topic 715—Compensation—Retirement Benefits*, and any other items of a similar nature; *plus* (k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period; *plus* (l) the amount of "run rate" cost savings, synergies and operating expense reductions related to restructurings, cost savings initiatives or other initiatives that are projected by the Company in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Company) within 24 months after the end of such period (which cost savings, synergies or operating expense reductions shall be calculated on a *pro forma* basis as though such cost savings, synergies or operating expense reductions had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that "run rate" means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Closing Date) (which adjustments may be incremental to (but not duplicative of) any *pro forma* cost savings, synergies or operating expense reduction adjustments as are appropriate and consistent with the *pro forma* provisions set forth in the definition of Fixed Charge Coverage Ratio); *provided* that such cost savings, synergies and operating expenses are reasonably identifiable and factually supportable; *plus* (m) any payments in the nature of compensation or expense reimbursement made to independent board members; *plus* (n) internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; *plus* (o) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of); *plus* (p) pre-startup expenses; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period: (a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition); (b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period; and (c) any income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of).

"*Consolidated Interest Expense*" means, with respect to any Person for any period, without duplication, the sum of:

(1) cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than Non- Recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof); *plus*

(2) non-cash interest expense resulting solely from (a) the amortization of original issue discount from the issuance of Indebtedness of such Person and its Restricted Subsidiaries at less than par (excluding the 2020 Bonds, the 2019 Bonds, the Senior Secured Notes and any Indebtedness borrowed under the Term Loan Credit Agreement or ABL Facility and any Non-Recourse Indebtedness), *plus* (b) pay-in-kind interest expense of such Person and its Restricted Subsidiaries payable pursuant to the terms of the agreements governing Indebtedness for borrowed money, excluding, in each case, (i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (2)(a) and (2)(b) above (including as a result of the effects of acquisition method accounting or pushdown accounting), (ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging*, (iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates, (iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness, (v) "additional interest" owing pursuant to a registration rights agreement with respect to any securities, (vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, (vii) penalties and interest relating to taxes, (viii) accretion or accrual of discounted liabilities not constituting Indebtedness, (ix) interest expense attributable to a Parent Company resulting from push-down accounting, (x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting, (xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential), with respect thereto in connection with any acquisition or Investment and (xii) annual agency fees paid to the administrative agents and collateral agents (including any security or collateral trust arrangements related thereto) under any Credit Facilities, including the ABL Facility, the Term Loan Credit Agreement, the Senior Secured Notes, the 2019 Bonds and the Bonds. For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"*Consolidated Net Income*" means, for any period, the net income (loss) of the Company and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and intellectual property development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after August 23, 2017 (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost savings initiatives; curtailments and modifications to pension and post- employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) expenses incurred in connection with the issuance of the Bonds, the 2019 Bonds and the Senior Secured Notes;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary, and, solely for the purpose of determining the amount available for Restricted Payments under Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments," the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting (*provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period);

(6) solely for the purpose of determining the amount available for Restricted Payments under Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments," the Net Income for such period of any Restricted Subsidiary (other than any Subsidiary Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Company reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration, or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, Compensation—Stock Compensation or Accounting Standards Codification Topic 505-50, Equity-Based Payments to Non-Employees, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Senior Secured Notes, the 2019 Bonds and the Bonds and the syndication and incurrence of any Credit Facilities, the Term Loan Credit Agreement or Other Pari Passu Lien Obligations), issuance of Equity Interests (including by any direct or indirect parent of the Company), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the 2019 Bonds, the Bonds and other securities and any Credit Facilities or the Term Loan Credit Agreement, Senior Secured Notes or Other Pari Passu Lien Obligations) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, Business Combinations);

(12) accruals and reserves that are established or adjusted in connection with an Investment or an acquisition that are required to be established or adjusted as a result of such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under the Bond Financing Indenture;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815— Derivatives and Hedging or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—Financial Instruments;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, Guarantees, or any comparable regulation;

(17) any non-cash rent expense;

(18) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(19) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under the Bond Financing Agreement.

Notwithstanding the foregoing, for the purpose of the Section 6.01 of the Bond Financing Agreement (other than Section 6.01(a)(3)(D) only) and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Restricted Payments" (other than (a)(3)(D) only), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under Section 6.01(a)(3)(D) of the Bond Financing Agreement (or clause (a)(3)(D) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments").

"*Consolidated Secured Debt*" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Company and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien; *provided* that Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. dollar-equivalent principal amount of such Indebtedness.

"*Consolidated Total Debt*" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Company and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness; *provided* that Consolidated Total Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. dollar-equivalent principal amount of such Indebtedness.

"*Construction Fund*" means the fund of that name established pursuant to Section 5.01(b) of the Bond Indenture.

"*Contingent Obligations*" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent: (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (2) to advance or supply funds (a) for the purchase or payment of any such primary obligation, or (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"*Continuing Disclosure Agreement*" means the Continuing Disclosure Agreement dated as of the Closing Date by and between the Company and the Dissemination Agent.

"*Controlled Investment Affiliate*" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Company and/or other companies.

"*Controlling Representative*" means:

(1) from and after August 23, 2017 until the First Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Term Loan Administrative Agent;

(2) from and after the First Controlling Change Date until the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Specified Pari Passu Lien Debt Representative;

(3) from and after the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Pari Passu Lien Debt Representative that represents the Series of Pari Passu Lien Debt with the then largest outstanding principal amount (which, if the proviso contained in the Collateral Trust Agreement under the heading Voting and described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—Collateral Trust Agreement—Voting" applies, will be the Series of Pari Passu Lien Debt with the then largest outstanding principal amount which cast its votes); *provided, however*, that if at any time prior to the Discharge of Pari Passu Lien Obligations the only remaining Pari Passu Lien Obligations are Secured Hedging Obligations, then the term "Controlling Representative" will mean the Hedge Bank with the largest amount of Secured Hedging Obligations owed to it.

"*Convertible Indebtedness*" means Indebtedness of the Company (which may be guaranteed by the Guarantors) permitted to be incurred under the terms of the Bond Financing Agreement that is either (a) convertible into common stock of the Company (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of the Company and/or cash (in any amount determined by reference to the price of such common stock).

"*Credit Facilities*" means, with respect to the Company or any Restricted Subsidiary, one or more debt facilities, including the ABL Facility or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, note issuances, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and other agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities that replace, refund, supplement, extend, renew, restate, amend, modify or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such exchange, replacement, refunding, supplemental, extended, renewed, restated, amended, modified or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof (*provided* that such increase in borrowings or issuances is permitted by Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock") or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or holders. Any agreement or instrument other than the ABL Facility must be designated in an Officer's Certificate delivered to the Trustee as a "Credit Facility" until such time as the Company subsequently delivers an Officer's Certificate to the Trustee to the effect that such facility will no longer constitute a "Credit Facility."

"*CTA Parties Event of Default*" means a Pari Passu Lien Debt Default, an "Event of Default" under the Equipment Lease Documents or an "Event of Default" under the Commercial Building Loan Agreement, as applicable.

"*CTA Parties Standstill Period*" means with respect to the Equipment Lessor and the Commercial Building Lender in connection with the Going Concern Collateral that constitutes Equipment Lease Collateral and Commercial Building Loan Collateral, respectively, the period of time commencing on the date when the other Lender Representatives and the Collateral Agent receive written notice from a Lender Representative of a CTA Parties Event of Default pursuant to the Collateral Trust Agreement (such date, the "*Standstill Commencement Date*") and ending on the earliest of (x) the date that the Controlling Representative ceases to exercise commercially reasonable efforts to identify a Going Concern Buyer or to direct the Collateral Agent to consummate a Going Concern Sale, (y) the date that the Controlling Representative notifies in writing the Equipment Lessor and the Commercial Building Lender it is no longer pursuing a Going Concern Sale and (z) that date that is 210 days after the Standstill Commencement Date.

"*CTA Parties Loan Documents*" means,

(i) with respect to the Pari Passu Lien Debt Representatives, Pari Passu Lien Debt Documents, the Pari Passu Lien Security Documents, and the Collateral Trust Agreement, with the rights and remedies of the Collateral Agent in connection with any enforcement of Liens as provided in the Collateral Trust Agreement, on behalf of itself and the other Pari Passu Lien Secured Parties, (ii) with respect to the Equipment Lessor, the Equipment Lease Documents and (iii) with respect to the Commercial Building Lender, the Commercial Building Loan Agreement and the Commercial Building Security Documents.

"*Debtor Relief Laws*" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"*Debt Service*" means the principal of and premium (if any) and interest on the Bonds, including on the 2020 Bonds, for any period or payable at any time, whether due on an Interest Payment Date or a Principal Payment Date.

"*Debt Service Fund*" means the fund of that name established pursuant to the Bond Indenture.

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

"*Default Rate"* with respect to a Bond, the interest rate borne by such Bond plus 1% per annum; provided that the Default Rate shall never exceed the Maximum Rate.

"*Deposit Agreement*" means the Security Deposit Agreement, substantially in the form attached to the Collateral Trust Agreement as Exhibit E, (with such changes as may be reasonably requested by the Depository Bank as are customary for its role as a depository thereunder), to be entered between the Company, the Collateral Agent, the ABL Agent (as defined in the Intercreditor Agreement), the Equipment Lessor and the Commercial Building Lender and the Depository Bank, governing the bank accounts established pursuant thereto, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the term thereof. As of the Closing Date, no Deposit Agreement is required under the Collateral Trust Agreement and no Deposit Agreement has been entered into pursuant thereto.

"*Depository*" means any securities depository that is a clearing agency or corporation under federal and state law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of Book-Entry interests in bonds, and to effect transfers of Book-Entry interests in bonds in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"*Depository Bank*" means U.S. Bank National Association, as both a "securities intermediary" and a "bank" under the Deposit Agreement.

"*Designated Non-Cash Consideration*" means the fair market value of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration.

"*Designated Office*" means, as to the 2020 Bonds, initially, as to the Registrar and the Trustee, for Bond transfer/surrender purposes, U.S. Bank National Association, Global Corporate Trust Services, 1350 Euclid Avenue, Suite 1100, Cleveland, Ohio 44115, and thereafter such office as each may designate from time to time; provided, that any change in designation shall be effective not sooner than the fifteenth day following the mailing by first-class mail of notice of that change to the Bond Issuer, the Company, each Holder that is a registered owner not earlier than the fifth Business Day prior to that mailing, the Paying Agent and, in the case of (i) the Registrar, to the Trustee and (ii) the Trustee, to the Registrar.

"*Designated Preferred Stock*" means Preferred Stock of the Company, any Restricted Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments."

"*Designated Revolving Commitments*" means any commitments to make loans or extend credit on a revolving basis to the Company or any Restricted Subsidiary by any Person other than the Company or any Restricted Subsidiary that have been designated in an Officer's Certificate delivered to the Trustee as "Designated Revolving Commitments" until such time as the Company subsequently delivers an Officer's Certificate to the Trustee to the effect that such commitments will no longer constitute "Designated Revolving Commitments"; *provided* that during such time, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Fixed Charge Coverage Ratio, Total Net Leverage Ratio, Senior Secured Net Leverage Ratio and the availability of any baskets pursuant to the Bond Financing Agreement.

"*Development*" means the ownership, occupation, design, development, construction, system establishment, testing, start-up, commissioning, implementation, optimization, repair, operation, maintenance and use of the Phase II Project through final completion of the Phase II Project as determined by the Board of Directors.

"*DIP Financing*" has the meaning given to such term in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement—Insolvency or Liquidation Proceeding."

"*Direct Agreement*" means any agreement required to be entered into under the Specified Pari Passu Lien Debt Documents or as otherwise entered into by the Company or any other Grantor, a counterparty to any material contract of the Company or such Grantor and the Collateral Agent, that grants the consent of such material contract counterparty to the collateral assignment of the applicable material contract to the Collateral Agent, including the SMS Direct Agreement.

"*Direct Participant*" means a participant as defined in the Letter of Representations.

"*Discharge of ABL Obligations*" means, with respect to any ABL Obligation, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, in any such case in whole or in part.

"*Discharge of Commercial Building Lender Obligations*" means the payment in full in cash of the principal of and interest and premium (if any) on all Commercial Building Lender Obligations and all other Commercial Building Lender Obligations that are outstanding and unpaid at the time such principal and interest is paid (other than contingent indemnification obligations not then due).

"*Discharge of Equipment Lease Obligations*" means the payment in full in cash of all Rent (as defined in the Equipment Lease) and all other Equipment Lease Obligations that are outstanding and unpaid (other than contingent indemnification obligations not then due).

"*Discharge of Fixed Asset Pari Passu Lien Obligations*" means, except to the extent otherwise expressly provided in the Intercreditor Agreement, the occurrence of each of the following clauses (a) through (c): (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Fixed Asset Pari Passu Lien Debt Documents; (b) (i) payment in full in cash of all the Secured Hedging Obligations (other than contingent indemnification obligations not then due) and the expiration or termination of all outstanding transactions under the Hedge Agreements or (ii) the cash collateralization of all such Hedging Obligations on terms satisfactory to each applicable Hedge Bank (or other arrangements satisfactory to each such Hedge Bank shall have been made); and (c) termination or expiration of all commitments, if any, to extend credit that would constitute Fixed Asset Pari Passu Lien Obligations.

"*Discharge of Pari Passu Lien Obligations*" means the occurrence of all of the following: (a) termination or expiration of all commitments to extend credit that would constitute Pari Passu Lien Debt; (b) with respect to each Series of Pari Passu Lien Debt, either (i) payment in full in cash of the principal of and interest and premium (if any) on all Pari Passu Lien Debt of such Series or (ii) there has been a legal defeasance or covenant defeasance pursuant to the terms of the applicable Pari Passu Lien Documents for such Series of Pari Passu Lien Debt; (c) payment in full in cash of all other Pari Passu Lien Obligations that are outstanding and unpaid at the time the Pari Passu Lien Debt is paid in full in cash; and (d) (i) payment in full in cash of all Secured Hedging Obligations and the expiration or termination of all outstanding transactions under the Hedge Agreements or (ii) the cash collateralization of all such Secured Hedging Obligations on terms satisfactory to each applicable Hedge Bank (or other arrangements satisfactory to each such Hedge Bank shall have been made).

"*Discharge of Specified Pari Passu Lien Debt Obligations*" means that the Pari Passu Lien Obligations pursuant to the Specified Pari Passu Lien Debt Documents (other than any contingent indemnification obligations not then due) are no longer secured by, and no longer required to be secured by, the Collateral pursuant to the terms of the Specified Pari Passu Lien Debt Documents.

"*Disposition*" means, with respect to any Person, any sale, assignment (except as contemplated by any of the Pari Passu Lien Debt Documents, the Equipment Lease or the Commercial Building Loan Agreement), conveyance, sale and leaseback, transfer, lease or other disposition of any property of such Person to any other Person. "*Dispose*" has a correlative meaning.

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for any Qualified Equity Interests or solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Bonds or the date the Bonds are no longer outstanding; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability; *provided*, *further* that any Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries, any Parent Company, or any other entity in which the Company or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt or Consolidated Secured Debt, as applicable, will be required to be determined pursuant to the Bond Financing Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Company.

"*Dissemination Agent*" means U.S. Bank National Association in its capacity as dissemination agent under the Continuing Disclosure Agreement.

"*Domestic Subsidiary*" means any direct or indirect Subsidiary of the Company that is organized or existing under the laws of the United States, any state thereof or the District of Columbia.

"*Electronic Means*" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services under the Bond Indenture.

"*Eligible Investments*" for purposes of the Bonds, the Bond Indenture and the Bond Financing Agreement shall mean any of the following investments, or any combination thereof, so long as such investments at the time of investment are legal investments under the laws of the State of Arkansas for the moneys proposed to be invested therein:

(a) (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, including State and Local Government Series ("*SLGS*") of such direct obligations; (b) obligations issued by a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or Federal Reserve Bank); and (c) securities evidencing ownership of the right to payment of specific principal or interest payments on an obligation described in (a) or (b) above, provided that such securities were created by or on behalf of the issuer of the applicable obligation and are held in the custody of a bank or trust company having a reported capital, surplus and undivided profits of at least $25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short-term category by at least one Rating Agency, in a special account separate from the general assets of such custodian ("Government Securities");

(b) Qualified Investments;

(c) unsecured certificates of deposit having maturities of not more than 365 days which are fully insured by the Federal Deposit Insurance Corporation ("*FDIC*") in one or more of the following institutions: banks, trust companies or savings and loan associations (including without limitation, the Trustee or any bank affiliated with the Trustee) organized under the laws of the United States of America or any state thereof, each bank, trust company or savings and loan association having a reported capital, surplus and undivided profits of at least $25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short-term category by at least one Rating Agency;

(d) unsecured and uninsured certificates of deposit having maturities of not more than 365 days in institutions described in clause (c) above, provided the short-term obligations of such institution are rated in the highest short-term category by at least one Rating Agency;

(e) any investment contract with a bank, trust company or savings and loan association having a reported capital, surplus and undivided profits of at least $25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short-term category by at least one Rating Agency, provided further that the investment contract shall contain a provision to the effect that such investment contract can be terminated by the Trustee without penalty in the event the rating of the institution falls below the highest short-term category by all of the Rating Agencies then rating such institution or such institution defaults on the payment of any of its obligations thereunder or to the Company, unless such investment contract is collateralized with Government Securities (as defined in clause (a) above) held by the Trustee or a third party custodian acting as agent for the Trustee with a value, marked to market no less frequently than on a weekly basis, of at least 102% of the principal amount invested under the investment contract or such rating is reinstated to the highest short-term category by at least one Rating Agency on or prior to such termination date;

(f) any share in a money market mutual fund provided such fund is (i) rated at least "A" by S&P or the equivalent by a Rating Agency or (ii) the entire investments of which are limited to investments described in clause (a) above;

(g) commercial paper rated in the highest short-term rating category by any Rating Agency;

(h) U.S. denominated deposit account, certificates of deposit and banker's acceptances of any bank, trust company, or savings and loan association, including the Trustee or their affiliates, which have a rating on their short-term certificates of deposit on the date of purchase in one of the two highest short-term rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by any Rating Agency, and which mature not more than 360 days after the date of purchase;

(i) an investment agreement, repurchase agreement or forward delivery agreement with a provider or a guarantor that has unsecured, unenhanced long-term obligations rated at least "A-" or its equivalent by one or more of the Rating Agencies at the time such agreement is entered into;

(j) certificates of deposit, bankers' acceptances or interest-bearing time deposits that are made with the Trustee or with any member of the Federal Deposit Insurance Corporation, provided that such investments are: (A) fully insured by the Federal Deposit Insurance Corporation; (B) made with any bank (including the Trustee or any Affiliate thereof) having undivided capital and surplus of at least $100,000,000, the debt obligations (or in the case of the principal bank holding company, debt obligations of the bank holding company) of which are rated in the top 2 tier categories by at least one of the recognized rating agencies at the time of purchase; or (C) continuously secured as to principal, to the extent not insured by the Federal Deposit Insurance Corporation, by items listed above, or other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States of America, having a market value (exclusive of accrued interest) not less than the amount of such deposit; and

(k) Tax-Exempt Obligations.

"EMU" means the economic and monetary union as contemplated in the Treaty on European Union.

"*Environmental Laws*" means all laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any governmental authority, including, without limitation, any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety relating to hazardous materials, the environment, or natural resources, or to use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants.

"*Environmental Permit*" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"*Equipment Lease*" means each of (i) Equipment Schedule No. 1, dated September 8, 2016, between the Equipment Lessor and the Company and (ii) Equipment Schedule No. 2, dated December 16, 2016, between the Equipment Lessor and the Company, in each case incorporating the terms of that certain Master Sub-sublease Agreement, dated as of September 8, 2016, as the same has been amended, supplemented, assigned or otherwise modified prior to August 23, 2017 and as in effect on such date and as may be further amended, supplemented, assigned or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Equipment Lease Advance*" means the sub-lease financings made by the Equipment Lessor under the Equipment Lease.

"*Equipment Lease Collateral*" means any subleased interest in equipment or real property sold to the Equipment Lessor and leased back by the Company in accordance with the Equipment Lease, in each case as described in, and as updated from time to time in accordance with, the Equipment Lease.

"*Equipment Lease Documents*" means the Equipment Lease, the Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement from the Company, as mortgagor, to the Equipment Lessor, as mortgagee, with the effective date of September 8, 2016, the Amended and Restated Recognition of Leasehold and Security Interest, Nondisturbance and Attornment Agreement made November 17, 2016 among the Company, the City of Osceola, Arkansas, the Equipment Lessor and the Commercial Building Lender, the Option Agreement, dated September 8, 2016, between the Company and the Equipment Lessor, the Amended and Restated Easement Agreement, dated as of December 16, 2016, among City of Osceola, as grantor, the Company and the Equipment Lessor, the Amended and Restated Environmental Indemnity Agreement, dated as of December 16, 2016, by the Company, Parent and the Equipment Lessor, the Continuing Guaranty, dated as of September 8, 2016, made by Parent in favor of the Equipment Lessor, the Guaranty Affirmation Letter delivered by Parent to the Equipment Lessor on December 16, 2016, and each of the other agreements, documents and instruments providing for or evidencing any Equipment Lease Obligation, and any other document or instrument executed or delivered at any time in connection with any Equipment Lease Obligations, in each case as the same has been amended, supplemented, assigned or otherwise modified prior to the Closing Date and as in effect on the Closing Date and as may be further amended, supplemented, assigned or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Equipment Lease Lien*" means a Lien granted, or purported to be granted, by the Company to the Equipment Lessor in the Equipment Lease Collateral to secure the Equipment Lease Obligations.

"*Equipment Lease Obligations*" means all Rent (as defined in the Equipment Lease Documents), fees, deposits, payments of stipulated loss value, late charges, reimbursement obligations and other amounts owing in connection with the Equipment Lease Advances issued under the Equipment Lease Documents.

"*Equipment Lease Proportion by Value*" means the net proceeds of a Going Concern Sale *multiplied* by the proportion of (x) $145,979,215, which is the amount of Project Costs expended by the Company to acquire and construct the Equipment Lease Collateral, *divided* by (y) $1,330,000,000, which is the total amount of Project Costs incurred by the Company as of August 23, 2017; *provided* that such amount will not exceed the total amount of the outstanding and unpaid Equipment Lease Obligations.

"*Equipment Lessor*" means SCF, as sub-sublessor under the Equipment Lease and servicer on behalf of other Persons.

"*Equity Interests*" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"*Equity Offering*" means any public or private sale of common equity or Preferred Stock of the Company or any Parent Company (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Company's or any Parent Company's common equity registered on Form S-4 or Form S-8;

(2) issuances to any Restricted Subsidiary of the Company; and

(3) any such public or private sale that constitutes an Excluded Contribution or Capex Equity.

"*Escrowed Proceeds*" means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "*Escrowed Proceeds*" shall include any interest earned on the amounts held in escrow.

"*Euroclear*" means Euroclear Bank S.A./N.V., as operator of the Euroclear system, and its successors.

"*Euros*" means the single currency of participating member states of the EMU.

"*Event of Default*" means, with respect to the Bonds, an Event of Default as described in Section 7.01 of the Bond Indenture, with respect to the Bond Financing Agreement, an Event of Default as described in Article VII of the Bond Financing Agreement, with respect to the Term Loan Credit Agreement, an Event of Default as described therein, and with respect to the Senior Secured Notes, an Event of Default pursuant to the Notes Indenture and, with respect to an event of default under any other document or agreement, the definition given to such term therein.

"*Excess ABL Obligations*" means any Obligations that would constitute ABL Obligations if not for the ABL Cap Amount.

"*Excess Proceeds*" has the meaning given to such term in Section 6.04(d) of the Bond Financing Agreement.

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

"*Excluded Account*" means any deposit or securities account now or hereafter owned by the Company or any other Grantor that is used solely by the Company or such Guarantor (a) as a payroll account so long as such payroll account is a zero balance account, (b) as a petty cash account so long as the aggregate amount on deposit in all petty cash accounts of the Company and all Guarantors does not exceed $50,000 at any one time for all such deposit accounts combined, (c) to hold amounts required to be paid in connection with workers compensation claims, unemployment insurance, social security benefits and other similar forms of governmental insurance benefits, (d) to hold amounts which are required to be pledged or otherwise provided as security as required by law or pension requirement, (e) to hold cash and cash equivalents pledged to secure Obligations under the ABL Facility consisting of reimbursement obligations in respect of letters of credit and swing line loans (and/or any obligations of lenders participating in the facilities under which such letters of credit are issued and swing line loans made) without granting a Lien thereon to secure any other Obligations under the ABL Facility or Lenders Debt or any Pari Passu Lien Obligations, (f) to hold cash and cash equivalents pledged to the Equipment Lessor to secure Equipment Lease Obligations so long as the aggregate amount of cash and cash equivalents so pledged and on deposit in or credited to all such accounts does not exceed $6,672,335 at any one time or (g) as a withholding tax or fiduciary account.

"*Excluded Assets*" means the collective reference to:

(1) any lease, license, contract or agreement to which the Company or any other Grantor is a party, and any of its rights or interest thereunder, if and to the extent that a security interest is prohibited by or in violation of (i) any law, rule or regulation applicable to the Company or such Guarantor, or (ii) a term, provision or condition of any such lease, license, contract or agreement (unless such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); *provided however* that the Excluded Assets shall not include (and security interest under the Security Documents shall attach) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in subclauses (i) or (ii) above; provided further that the exclusions referred to in this clause (1) of this definition shall not include any Proceeds (as defined in the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction) of any such lease, license, contract or agreement;

(2) any portion of Capital Stock that is voting Capital Stock of any Foreign Subsidiary or CFC Holdco to the extent such portion of Capital Stock represents voting power in excess of 65% of the total combined voting power of all classes of voting stock (within the meaning of Treasury Regulations section 1.956-2(c)(2)) of such Foreign Subsidiary or CFC Holdco;

(3) any "intent-to-use" application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(4) any equity interests in, and the assets and properties of, an Excluded Subsidiary; or

(5) Excluded Accounts.

"*Excluded Capital Expenditures*" means any Capital Expenditure (whether or not required) made solely for maintenance, replacement or environmental, human health or safety or other regulatory purposes and not in connection with the incurrence of Expansion Capital Expenditures.

"*Excluded Contribution*" means Net Cash Proceeds, the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Company from:

(1) contributions to its common equity capital;

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

(3) the sale (other than to a Restricted Subsidiary of the Company or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Company) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Company; in each case, designated as Excluded Contributions pursuant to an Officer's Certificate or that are excluded from the calculation set forth in Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments."

"*Excluded Subsidiary*" means (1) any Subsidiary that is not a Wholly-Owned Subsidiary of the Company or a Subsidiary Guarantor, (2) any Foreign Subsidiary, (3) any CFC Holdco, (4) any Domestic Subsidiary that is a direct or indirect Subsidiary of any CFC, (5) any Subsidiary, including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions, that is prohibited or restricted by applicable law or by contractual obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Closing Date (or, with respect to any Subsidiary acquired by the Company or a Restricted Subsidiary after the Closing Date (and so long as such contractual obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guarantee (including any Broker-Dealer Regulated Subsidiary), or if such Guarantee would require governmental (including regulatory) or third party (other than the Company or any Guarantor or their respective Subsidiaries) consent, approval, license or authorization, (6) any special purpose vehicle (or similar entity) or any Securitization Subsidiary, (7) any Captive Insurance Subsidiary, (8) any not-for-profit Subsidiary, (9) any Subsidiary that is not a Significant Subsidiary, (10) any other Subsidiary with respect to which, in the reasonable judgment of the Company, the burden or cost (including any material adverse tax consequences) of providing the Guarantee will outweigh the benefits to be obtained by the Holders therefrom and (11) each Unrestricted Subsidiary; *provided* that any such Subsidiary that is an Excluded Subsidiary pursuant to clause (9) or (10) above will cease to be an Excluded Subsidiary at any time such Subsidiary guarantees Indebtedness under the Term Loan Credit Agreement, the ABL Facility or Capital Markets Indebtedness of the Company or any other Subsidiary Guarantor.

"*Expansion Capital Expenditures*" means (i) any Capital Expenditures carried out for the purpose of increasing the earnings capacity of the Company or a Subsidiary Guarantor or (ii) any Investment in a Restricted Subsidiary made pursuant to clause (26) of the definition of "Permitted Investments;" *provided* further that Expansion Capital Expenditures shall include any Phase II Project Costs whether or not such Phase II Project Costs are considered capital expenditures in accordance with GAAP. Excluded Capital Expenditures shall be deemed not to be Expansion Capital Expenditures.

"*Extraordinary Services*" or "*Extraordinary Expenses*" means all services rendered and all reasonable expenses incurred by the Trustee under the Bond Indenture, other than Ordinary Services and Ordinary Expenses.

"*fair market value*" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Company in good faith.

"*Financial Officer*" means the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of the Company, as appropriate.

"*First Specified Pari Passu Lien Debt Threshold Date*" means the date on which the sum of (1) the outstanding principal amount of the term loans under the Specified Pari Passu Lien Debt Documents (as long as the amount of funded term loans is not less than 25% of the aggregate term loan commitments thereunder on the Initial Funding Date (but in no event unless and until the amount of funded term loans exceeds $275.0 million) plus (2) from and after the occurrence of the Initial Funding Date, the aggregate term loan commitments subject to the Specified Commitment Condition under the Specified Pari Passu Lien Debt Documents exceeds (1) 50% of the aggregate outstanding principal amount of all Pari Passu Lien Debt or (2) the aggregate outstanding principal amount of the largest Series of Pari Passu Lien Debt (other than, for purposes of this clause (2), such loans and such commitments under the Specified Pari Passu Lien Debt Documents).

"*Fixed Asset Accounts*" has the meaning ascribed to the term "Accounts" in the Deposit Agreement.

"*Fixed Asset Collateral Proceeds Account*" means a deposit or securities account which will be used solely for deposit of identifiable proceeds of Fixed Asset Priority Collateral prior to the date the Deposit Agreement becomes effective.

"*Fixed Asset General Intangibles*" means all general intangibles (including intellectual property) which are not ABL Priority Collateral.

"*Fixed Asset Mortgages*" means a collective reference to each mortgage, deed of trust and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Fixed Asset Pari Passu Lien Obligations or under which rights or remedies with respect to any such Liens are governed.

"*Fixed Asset Pari Passu Lien Claimholders*" means, at any relevant time, the holders of Fixed Asset Pari Passu Lien Obligations at that time, including the Holders, the Trustee, any other Pari Passu Lien Debt Representative (as defined in the Collateral Trust Agreement) and the other Pari Passu Lien Secured Parties and the Collateral Agent, and the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, any former Collateral Agent, Holder, Trustee and other Pari Passu Lien Debt Representative and Pari Passu Lien Secured Parties to the extent that any Obligations owing to such Persons were incurred while such Persons were Collateral Agent, Holder, Trustee, Pari Passu Lien Debt Representative or Pari Passu Lien Secured Parties, as applicable, and such Obligations have not been paid or satisfied in full.

"*Fixed Asset Pari Passu Lien Collateral Documents*" means the Collateral Trust Agreement, the "Collateral Documents" (as defined in the Term Loan Credit Agreement), the Security Documents and any other agreement, document or instrument pursuant to which a Lien is granted securing any Fixed Asset Pari Passu Lien Obligations or under which rights or remedies with respect to such Liens are governed (other than the Intercreditor Agreement).

"*Fixed Asset Pari Passu Lien Debt Documents*" means (a) the Notes Indenture, the Senior Secured Notes, the Term Loan Credit Agreement, the 2019 Bond Financing Agreement, the Bond Financing Agreement, any Specified Pari Passu Lien Debt Documents, any other indenture, notes, credit agreement or other agreement or instrument pursuant to which any Pari Passu Lien Debt (as defined in the Collateral Trust Agreement) is incurred, the Fixed Asset Pari Passu Lien Collateral Documents and the Intercreditor Agreement and (b) each of the other agreements, documents and instruments providing for or evidencing any other Fixed Asset Pari Passu Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any Fixed Asset Pari Passu Lien Obligations, including any intercreditor or joinder agreement among holders of Fixed Asset Pari Passu Lien Obligations to the extent such are effective at the relevant time, as each may be amended, restated, supplemented, modified, renewed or extended, replaced or Refinanced from time to time to the extent permitted pursuant to the Intercreditor Agreement.

"*Fixed Asset Pari Passu Lien Obligations*" means:

(1) all Obligations under the Notes Indenture, the Term Loan Credit Agreement, the Senior Secured Notes, the 2019 Bond Financing Agreement, the Specified Pari Passu Lien Debt Documents and other Obligations in respect of Pari Passu Lien Debt (including Obligations under the Bond Financing Agreement and the Series 2020 Note);

(2) all Secured Hedging Obligations; and

(3) to the extent any payment with respect to any Fixed Asset Pari Passu Lien Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any ABL Claimholders, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of the Intercreditor Agreement and the rights and obligations of the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to be reinstated and outstanding as if such payment had not occurred. To the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the Fixed Asset Pari Passu Lien Debt Documents are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "Fixed Asset Pari Passu Lien Obligations." For purposes of the Bond Financing Agreement, and for the avoidance of doubt, "Fixed Asset Pari Passu Lien Obligations" includes (i) Obligations of the Company and the other Grantors under the Bond Financing Agreement or any of the Security Documents, (ii) Secured Hedging Obligations, and (iii) any Other Pari Passu Lien Obligations.

"*Fixed Asset Priority Collateral*" means the following of any Grantor: (i) Equipment (as defined in the UCC); (ii) Real Estate Assets; (iii) intellectual property; (iv) Equity Interests in all direct Subsidiaries of any Grantor; (v) intercompany indebtedness of the Company and its Subsidiaries; (vi) all other assets of any Grantor, whether real, personal or mixed (including the Revenue Account and other Fixed Asset Accounts and the Fixed Asset Collateral Proceeds Account), in each case, not constituting ABL Priority Collateral prior to the Discharge of ABL Obligations; (vii) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all documents, general intangibles, instruments, commercial tort claims, letters of credit, letter-of credit-rights and supporting obligations; provided, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any ABL Priority Collateral only that portion that evidences, governs, secures or reasonably relates to Fixed Asset Priority Collateral shall constitute Fixed Asset Priority Collateral; (viii) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); (ix) insurance and claims against third parties to the extent arising on account of Fixed Asset Priority Collateral (excluding, however, the proceeds of and payments under all policies of business interruption insurance); and (x) all proceeds and products of any or all of the foregoing in whatever form received, but excluding any property that is directly acquired prior to the commencement of any case or proceeding under the Bankruptcy Code or any similar Bankruptcy Law with cash proceeds of any Fixed Asset Priority Collateral and does not otherwise constitute Fixed Asset Priority Collateral upon its acquisition. Subject to certain provisions of the Intercreditor Agreement, upon a Discharge of ABL Obligations, all ABL Priority Collateral shall become Fixed Asset Priority Collateral.

"*Fixed Charge Coverage Ratio*" means, with respect to any Test Period, the ratio of (1) Consolidated EBITDA of the Company for such Test Period to (2) the Fixed Charges of the Company and its Restricted Subsidiaries for such Test Period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock or establishes or eliminates any Designated Revolving Commitments, in each case, subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Fixed Charge Coverage Ratio Calculation Date*"), then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the most recently ended Test Period (and (1) for the purposes of the numerator of the Total Net Leverage Ratio and the Senior Secured Net Leverage Ratio, as if the same had occurred on the last day of the most recently ended Test Period and (2) for all purposes, as if Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period); *provided*, *however*, that at the election of the Company, the *pro forma* calculation will not give effect to any Indebtedness incurred or Disqualified Stock or Preferred Stock issued on the Fixed Charge Coverage Ratio Calculation Date pursuant Section 6.03(b) of the Bond Financing Agreement (other than clause (15) thereof or Indebtedness secured pursuant to clause (4) of the definition of Permitted Liens in the case of the Senior Secured Net Leverage Ratio) and as described in the second paragraph (other than clause (15) thereof or Indebtedness secured pursuant to clause (4) of the definition of Permitted Liens in the case of the Senior Secured Net Leverage Ratio) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of Borrower—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock." For purposes of making the computation referred to above, any Specified Transaction that has been consummated by the Company or any Restricted Subsidiary during any Test Period or subsequent to such Test Period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date will be calculated on a *pro forma* basis assuming that all such Specified Transactions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Test Period. If since the beginning of such Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Company or any Restricted Subsidiary since the beginning of such Test Period will have made any Specified Transaction that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect thereto for such Test Period as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period. For purposes of this definition in the Bond Financing Agreement, whenever *pro forma* effect is to be given to any Specified Transaction, the *pro forma* calculations will be made in good faith by a Financial Officer of the Company and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions and synergies projected by the Company in good faith to result from or relating to any Specified Transaction which is being given *pro forma effect* that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Company) no later than twenty four (24) months after the date of any such Specified Transaction (in each case as though such cost savings, operating expense reductions and synergies had been realized on the first day of the applicable period and as if such cost savings, operating expense reductions and synergies were realized for the entirety of such period). For the purposes of the Bond Financing Agreement, "*run-rate*" means the full recurring benefit for a period that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target's compliance costs with public company requirements), net of the amount of actual benefits realized during such period from such actions. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness will be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, will be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

"*Fixed Charge Coverage Ratio Calculation Date*" has the meaning ascribed to such term in the definition of "Fixed Charge Coverage Ratio."

"*Fixed Charges*" means, with respect to any Person for any period, the sum of, without duplication:

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and

(3) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

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

"*Funded Debt*" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(1) in respect of borrowed money or advances; or

(2) evidenced by indentures, bonds, notes, debentures, loan agreements or similar instruments. For the avoidance of doubt, "Funded Debt" shall not include Secured Hedging Obligations.

"*GAAP*" means generally accepted accounting principles in the United States of America 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 have been approved by a significant segment of the accounting profession, as in effect from time to time. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any of the Company's Subsidiaries at "fair value," as defined therein.

"Going Concern" means that the Project facility is producing any commercially saleable product and capable of operating as a going concern, as determined in the reasonable discretion of the Controlling Representative.

"Going Concern Buyer" means any purchaser, or potential purchaser, of the Project, that is not an Affiliate of any Grantor, and that intends, as determined in good faith by the Controlling Representative, to continue to operate the Project as a Going Concern following the completion of the sale to it of Project assets or the Capital Stock of the Company.

"Going Concern Collateral" means all of the Collateral except for the ABL Priority Collateral, and in any event including the Equipment Lease Collateral and the Commercial Building Collateral.

"Going Concern Sale" means the sale of the Project (whether through a sale of the Project assets or the sale of the Company's Capital Stock) to a Going Concern Buyer.

"*Governmental Authority*" means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, or otherwise, 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).

"*Government Securities*" has the meaning given to such term in the definition of "Eligible Investments."

"*Grantor*" means, for the purposes of the Collateral Trust Agreement or the Intercreditor Agreement, the Company, Parent, the Guarantors and any other Person (if any) that at any time provides collateral security for any Pari Passu Lien Obligations, Equipment Lease Obligations or Commercial Building Lender Obligations; and, for the purposes of the Bond Financing Agreement means the Company, Parent and any other Guarantor.

"*guarantee*" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"*Guarantee*" means the guarantee by any Person of the Company's Obligations under the Bond Financing Agreement and the Series 2020 Note.

"*Guarantor*" means Parent (or any successor thereof) and the Subsidiary Guarantors.

"*Hazardous Materials*" means all explosive or radioactive substances or wastes, and all other substances, wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

"*Hedge Agreement*" means any agreement governing Hedging Obligations; *provided* that the counterparty thereto has delivered a Collateral Trust Joinder in respect thereof under the Collateral Trust Agreement. The term "Hedge Agreement" shall include both any "master agreement" and any related transaction and the related confirmations that are subject to the terms and conditions of, or governed by, any Hedge Agreement; it being understood and agreed that a Collateral Trust Joinder shall only be required once for each master agreement and shall not be required for each individual transaction or confirmation thereunder.

"*Hedge Bank*" means any Person that is an Agent, a Lender, an Arranger (as each such term is defined in the Term Loan Credit Agreement or the ABL Facility) or an Affiliate of any of the foregoing that delivers a Collateral Trust Joinder, whether or not such Person subsequently ceases to be an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing.

"*Hedging Obligations*" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer, modification or mitigation of interest rate, currency, commodity risks or equity risks either generally or under specific contingencies. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

"*Immediate Family Members*" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in- law, father-in-law, son-in-law and daughter- in-law (including, in each case, adoptive relationships) and any trust, partnership or other *bona fide* estate planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"*Incur*" means issue, assume, enter into any guarantee of, incur or otherwise become liable for and the terms "*Incurs*", "*Incurred*" and "*Incurrence*" shall have a correlative meaning.

"*Incremental Amounts*" has the meaning assigned to such term in the definition of "*Refinancing Indebtedness.*"

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

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent: (a) in respect of borrowed money; (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof); (c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations and Sale and Lease-Back Transactions other than Specified Sale and Lease-Back Transactions) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice and (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable; (d) representing the net obligations under any Hedging Obligations; or (e) Attributable Indebtedness; if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any Parent Company appearing upon the balance sheet of the Company solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person;

provided that notwithstanding the foregoing, Indebtedness will be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice (including any Contingent Obligations issued in connection with operating licenses or permits), (b) reimbursement obligations under commercial letters of credit (provided that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn), (c) obligations under or in respect of Qualified Securitization Facilities; (d) accruals for payroll and other liabilities accrued in the ordinary course of business, and those accrued in connection with the Management Services Agreements, (e) deferred or prepaid revenues, (f) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care) and (g) obligations in connection with a Specified Sale and Lease-Back Transaction; *provided*, *further* that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, Derivatives and Hedging, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under the Bond Financing Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"*Independent Assets or Operations*" means, with respect to any Parent Company, that Parent Company's total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Company and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.00% of such Parent Company's corresponding consolidated amount.

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

"*Indirect Participant*" means a Person utilizing the Book-Entry System of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

"*Initial Funding Date*" means the first date on which both (a) the initial advance(s) of term loans has been made under the Specified Pari Passu Lien Debt Documents and (b) the only conditions to further advances of term loans under the Specified Pari Passu Lien Debt Documents are conditions precedent substantially similar to the conditions precedent set forth in the Original KfW Credit Agreement (such condition, the "*Specified Commitment Condition*").

"*Interest Account*" means the account of that name established in the Debt Service Fund pursuant to Section 5.01(a) of the Bond Indenture.

"*Interest Payment Date*" or "*Interest Payment Dates*" means, with respect to the 2020 Bonds, each March 1 and September 1 commencing March 1, 2021.

"*Inventory*" has the meaning given to such term in Article 9 of the UCC.

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

"*Investment Grade Securities*" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Company and its Subsidiaries;

(3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"*Investments*" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice) or purchases or sales or other dispositions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definitions of "Permitted Investments" and "Unrestricted Subsidiary" and the covenant contained in Section 6.01 of the Bond Financing Agreement and described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Restricted Payments;" (1) "Investments" will include the portion (proportionate to the Company's Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided* that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to: (a) the Company's "Investment" in such Subsidiary at the time of such redesignation; *minus* (b) the portion (proportionate to the Company's Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and (2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer. The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Company or a Restricted Subsidiary in respect of such Investment.

"*Investor*" means any of Koch Industries, Inc., TPG Capital, L.P., Arkansas Teacher Retirement System, Global Principal Partners LLC, US Steel, directly or indirectly through its Subsidiaries, any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"*Insolvency or Liquidation Proceeding*" means (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to the Company or any other Grantor, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Company or any other Grantor or with respect to any of its assets, (c) any liquidation, dissolution, reorganization or winding up of the Company or any other Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Company or any other Grantor.

"*Intercreditor Agreement*" means that intercreditor agreement dated as of August 23, 2017 by the Collateral Agent, on its own behalf and on behalf of the Trustee, the trustee for the 2019 Bonds, the trustee for the Senior Secured Notes, the holders of the Senior Secured Notes, the holders of the 2019 Bonds, the Bondholders and other Secured Parties, and the ABL Agent, on its own behalf and on behalf of the lenders under the ABL Facility and any other Lenders Debt (together with the Collateral Agent, the "Applicable Collateral Agents"), the Equipment Lessor, the Commercial Building Lender, the Company and the other Grantors, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"*Laws*" means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"*Legal Holiday*" means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

"*Lenders Debt*" means all (i) Indebtedness outstanding from time to time under the ABL Facility (including all principal, interest, fees, costs and expenses thereunder), (ii) any Indebtedness which has a priority security interest relative to the Obligations under the Bond Financing Agreement in the ABL Priority Collateral pursuant to the Intercreditor Agreement, (iii) all Obligations with respect to such Indebtedness and any Hedging Obligations directly related to any Lenders Debt and (iv) all Obligations incurred with the ABL Facility Lenders (or their affiliates) in connection with the delivery of cash management and related services and other commercial bank products as described in the ABL Facility.

"Lender Representative" means each Pari Passu Lien Debt Representative, acting on behalf of the Pari Passu Lien Secured Parties represented by such Pari Passu Lien Debt Representative, the Equipment Lessor (acting on its own behalf and as servicer for certain other Persons) and the Commercial Building Lender (acting on its own behalf).

"*Letter of Representations*" means the Blanket Issuer Letter of Representations dated July 24, 1995 filed by the Issuer and accepted by the Depository.

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

"*Limited Offering Memorandum*" means the Limited Offering Memorandum (in printed or electronic form) with respect to the 2020 Bonds, dated as of August 28, 2020, and any amendments or supplements thereto that shall be approved by the Bond Issuer and the Company, in connection with the limited public offering and sale of the 2020 Bonds.

"*Majority Holders*" means, with respect to any Series of Pari Passu Lien Debt, the holders of more than 50% of the aggregate outstanding principal amount (and, if applicable, the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) in respect thereof.

"*Management Services Agreements*" means any management services agreement, bonus agreement or similar agreements among one or more of the Investors or Management Stockholders or certain of their respective management companies or Affiliates thereof associated with it or their advisors, if applicable, and the Company (and/or any Parent Company) or any amendment thereto or renewal or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole, as compared to the Management Services Agreements as in effect on the Closing Date.

"*Management Stockholders*" means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Company (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date.

"*Margin Stock*" has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"*Market Capitalization*" means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Company or the applicable Parent Company, as applicable, on the date of the declaration of a Restricted Payment permitted pursuant to Section 6.01(b)(8) of the Bond Financing Agreement and clause (b)(8) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments" multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"*Material Adverse Effect*" means any material adverse change, or any development involving a prospective material adverse change, whether or not arising from transactions in the ordinary course of business, in or affecting (i) the business, properties, general affairs, management, financial position, stockholders' equity or results of operations of the Company, the Guarantors and their Subsidiaries, taken as a whole, or (ii) the ability of the Company or any Guarantor to perform in all material respects its obligations under the Borrower Documents, the Existing Debt Documents, the Guarantees or the Collateral Documents.

"*Material Real Property*" means any fee-owned real property owned by the Company or leasehold interest of the Company in real property, in each case, located in the United States and with a fair market value in excess of $10.0 million on the Closing Date (if owned or leased by the Company on the Closing Date) or at the time of acquisition (if acquired by the Company after the Closing Date).

"*Maximum Rate*" means, with respect to the 2020 Bonds, the lesser of 15% per annum or the maximum interest rate permitted by applicable Arkansas law.

"*Money Laundering Laws*" means anti-money laundering laws, including, but not limited to, the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and the anti-money laundering laws of the various jurisdictions in which any such party or its subsidiaries conduct business.

"*Mortgaged Property"* means any real property subject to a deed of trust or mortgage.

"*Mortgages*" means the mortgages, debentures, hypothecs, deeds of trust, deeds to secure Indebtedness or other similar documents securing Liens on the owned real property or leased real property that is to form a portion of the Collateral.

"*Mortgaged Premises*" means any real property which shall now or hereafter be subject to a mortgage.

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

"*Net Cash Proceeds,*" with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

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

"*Net Proceeds*" means the aggregate cash and Cash Equivalents received by the Company or any Restricted Subsidiary in respect of any Asset Sale, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Company or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Company or any Restricted Subsidiary, in either case in respect of such Asset Sale, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under the Bond Financing Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) or amounts required to be applied to the repayments of Indebtedness secured by a Lien on such assets and required (other than required by Section 6.04(b)(1) of the Bond Financing Agreement and clause (b)(1) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Asset Sales") to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Company or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"*Non-Recourse Indebtedness*" means Indebtedness that is non-recourse to the Company and the Restricted Subsidiaries.

"*Notes Indenture*" means the Indenture dated as of August 23, 2017 among the Company, as issuer, BRS Finance Corp., as co-issuer, the Parent, each guarantor that may become a party thereto, and U.S. Bank National Association, as trustee and collateral agent, relating to 7.250% Senior Secured Notes due 2025.

"*Obligations*" means any principal, interest (including any interest accruing on or 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 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.

"*OECD*" means the Organisation for Economic Co-Operation and Development.

"*OECD Rules*" means the OECD Arrangement on Guidelines for Officially Supported Export Credits (TAD/ECG (2017) 1) dated February 1, 2017, as amended from time to time.

"*Officer*" means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of any Person. Unless otherwise indicated, Officer shall refer to an officer of the Company.

"*Officer's Certificate*" means a certificate signed on behalf of a Person by an Officer of such Person that meets the requirements set forth in the Bond Financing Agreement.

"*ordinary course of business*" means activity conducted in the ordinary course of business of the Company and any Restricted Subsidiary.

"*Ordinary Services*" or "*Ordinary Expenses*" means those standard and customary services normally rendered, and those reasonable expenses normally incurred, by a trustee under instruments similar to the Bond Indenture and the Bond Financing Agreement.

"*Original KfW Credit Agreement*" means that certain Senior Facilities Agreement, dated as of June 27, 2014 (as amended, supplemented or modified from time to time on or prior to August 23, 2017) among the Company, the guarantors party thereto, KfW IPEX-Bank GmbH, as the lead arranger and the and the other lenders party hereto, KfW IPEX-Bank GmbH, as administrative agent, and Deutsche Bank Trust Issuer Americas, as collateral agent.

"*Other Pari Passu Lien Obligations*" means (a) all outstanding Indebtedness under the Notes Indenture, the Senior Secured Notes, the Term Loan Credit Agreement and the 2019 Bond Financing Agreement, (b) Funded Debt incurred under Specified Pari Passu Lien Debt Documents, and (c) any other Indebtedness that is permitted to be secured on a pari passu basis with the Liens securing the Obligations under the Bond Financing Agreement and the Series 2020 Note, by the Collateral and not by any other assets; *provided*, *however*, that a representative or agent with respect to such Indebtedness described in this clause (c) is a Pari Passu Lien Debt Representative under the Collateral Trust Agreement and such Indebtedness is Additional Pari Passu Lien Debt.

"*Other Pari Passu Lien Obligations Debt Limit*" means, as at any time of determination, $400 million *plus* an amount equal to the product of (x) the aggregate amount of Capex Equity received since the Base Date through and including such time of determination multiplied by (y) two.

"*Outstanding*", "*Outstanding Bonds*" or "*Bonds outstanding*" means, as of the applicable date, all Bonds which have been authenticated and delivered, except:

(a) Bonds canceled or required to be canceled pursuant to the provisions of the Bond Indenture upon surrender, exchange or transfer, or canceled or required to be canceled pursuant to the provisions of the Bond Indenture because of payment or redemption on or prior to that date;

(b) On and after the applicable payment, redemption or purchase date, Bonds, or the portion thereof, for the payment, redemption or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee or any Paying Agent pursuant to the Bond Indenture for the purpose of extinguishing the applicable debt; provided, that, in the case of the redemption or purchase of the applicable Bonds, notice of such redemption or purchase shall have been given as required under the Bond Indenture;

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of the Bond Indenture;

(d) Bonds paid pursuant to Section 3.07 of the Bond Indenture; and

(e) Bonds in lieu of which others have been authenticated pursuant to the Bond Indenture; provided that, in determining whether the Holders of the requisite percentage of Bonds have concurred in any demand, direction, request, notice, consent, waiver or other action under the Bond Indenture, Bonds that are owned by the Company or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination (unless all of the Bonds are so owned); provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only such Bonds of which the Trustee has actual knowledge are so owned shall be disregarded. Bonds so owned that have been pledged in good faith may be regarded as Outstanding for such purpose, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

"*Outstanding Term Loan Threshold Date*" means the date on which both (x) the outstanding principal amount of Term Loan under (and as defined in) the Term Loan Credit Agreement (or the aggregate outstanding principal amount of all loans and other evidences of indebtedness in respect thereof under any replacement Term Loan Credit Agreement designated as such in accordance with the Collateral Trust Agreement) is less than 15% of the aggregate outstanding principal amount (and the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) of all Pari Passu Lien Debt and (y) the aggregate outstanding principal amount (and the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) of another Series of Pari Passu Lien Debt exceeds the outstanding principal amount of Term Loans under the Term Loan Credit Agreement.

"Parent" means BRS Intermediate Holdings LLC, a Delaware limited liability company.

"*Parent Company*" means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of the Company.

"*Parent Guarantee*" means a Guarantee of Parent and its successors.

"*Pari Passu Indebtedness*" means:

(1) with respect to the Company, the Obligations under the Bond Financing Agreement and the Series 2020 Note and any Indebtedness which ranks pari passu in right of payment thereto; and

(2) with respect to any Guarantor, its Guarantee and any Indebtedness which ranks pari passu in right of payment to such Guarantor's Guarantee.

"*Pari Passu Lien*" means a Lien granted, or purported to be granted, by a Pari Passu Lien Security Document to the Collateral Agent, at any time, upon any property of the Company or any other Grantor to secure Pari Passu Lien Obligations.

"*Pari Passu Lien Debt*" means: (a) any Funded Debt now or hereafter incurred under the Term Loan Credit Agreement; (b)(i) the Obligations under the Bond Financing Agreement and the Series 2020 Note (and amendments or supplements thereto or additional notes delivered in connection with the issuance of any Additional Bonds), the Obligations under the 2019 Bond Financing Agreement and the Series 2019 Note (and amendments or supplements thereto or additional notes delivered in connection with the issuance of any additional Bonds pursuant to the 2019 Indenture) and any Senior Secured Notes issued on August 23, 2017 and any senior secured notes issued under the Notes Indenture (or a supplemental indenture thereto) in exchange for the Senior Secured Notes and (ii) any additional Senior Secured Notes issued under the Notes Indenture (or a supplemental indenture thereto) from time to time and any Senior Secured Notes issued under the Notes Indenture in exchange for such additional senior secured notes; and (c) any other Funded Debt (including, without limitation (x) Funded Debt incurred under any replacement Notes Indenture, (y) Funded Debt incurred under Specified Pari Passu Lien Debt Documents or (z) borrowings under any other Pari Passu Lien Debt Documents) that is secured by a Pari Passu Lien and that was permitted to be incurred and permitted to be so secured under each applicable Pari Passu Lien Debt Document; provided, in the case of any Funded Debt referred to in this clause (c), that: (i) on or before the date on which such Funded Debt is incurred by the Company or by another Grantor, such Funded Debt is designated by the Company as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement; (ii) unless such Funded Debt is issued under an existing Pari Passu Lien Debt Document for any Series of Pari Passu Lien Debt whose Pari Passu Lien Debt Representative is already party to the Collateral Trust Agreement, the Pari Passu Lien Debt Representative for such Funded Debt executes and delivers a Collateral Trust Joinder in accordance with the Collateral Trust Agreement; and (iii) all other requirements for the Additional Pari Passu Lien Obligations Debt Designations set forth in the Collateral Trust Agreement have been complied with. For the avoidance of doubt, (i) Secured Hedging Obligations do not constitute Pari Passu Lien Debt but may constitute Pari Passu Lien Obligations and (ii) Equipment Lease Obligations and Commercial Building Lender Obligations do not constitute Pari Passu Lien Debt.

"*Pari Passu Lien Debt Default*" means any event or condition that, under the terms of any indenture, credit agreement or other agreement governing any Series of Pari Passu Lien Debt causes, or permits holders of Pari Passu Lien Debt outstanding thereunder (with or without the giving of notice or lapse of time, or both, and whether or not notice has been given or time has lapsed) to cause, the Pari Passu Lien Debt outstanding thereunder to become immediately due and payable.

"*Pari Passu Lien Debt Documents*" means the Bond Financing Agreement, the 2019 Bond Financing Agreement, the Notes Indenture, the Term Loan Credit Agreement and any other indenture, notes, credit agreement or other agreement or instrument pursuant to which any Pari Passu Lien Debt is incurred (including, without limitation, the Specified Pari Passu Lien Debt Documents) and the Pari Passu Lien Security Documents.

"*Pari Passu Lien Debt Proportion by Value*" means (x) the net proceeds of a Going Concern Sale *minus* (y) the sum of the Equipment Lease Proportion by Value *plus* the Commercial Building Loan Proportion by Value, *provided* that such amount will not exceed the total amount of the outstanding and unpaid Pari Passu Lien Obligations.

"*Pari Passu Lien Debt Representative*" means:

(1) in the case of the Term Loan Credit Agreement, the Term Loan Administrative Agent;

(2) in the case of the Bond Financing Agreement, the Trustee (as assignee of the Bond Issuer);

(3) in the case of the Notes Indenture, the trustee for the Senior Secured Notes, and in the case of the 2019 Bonds Financing Agreement, the trustee for the 2019 Bonds;

(4) in the case of the Specified Pari Passu Lien Debt Documents, the Specified Pari Passu Lien Debt Representative;

(5) in the case of any other Series of Pari Passu Lien Debt, the trustee, agent or representative of the holders of such Series of Pari Passu Lien Debt who maintains the transfer register for such Series of Pari Passu Lien Debt or is appointed as a representative of the Pari Passu Lien Debt (for purposes related to the administration of the Pari Passu Lien Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Pari Passu Lien Debt, and who has executed a Collateral Trust Joinder; and

(6) in the case of any Secured Hedging Obligations owing to a Hedge Bank, such Hedge Bank.

"*Pari Passu Lien Obligations*" means the Pari Passu Lien Debt and all other Obligations in respect of Pari Passu Lien Debt, together with Secured Hedging Obligations, including any Post-Petition Interest whether or not allowable, and all guarantees of any of the foregoing. In addition to the foregoing, all obligations owing to the Collateral Agent in its capacity as such, whether pursuant to the Collateral Trust Agreement or one or more of the Pari Passu Lien Debt Documents, shall in each case be deemed to constitute Pari Passu Lien Obligations (with the obligations described in this sentence being herein the "Collateral Agent Obligations"), which Collateral Agent Obligations shall be entitled to the priority provided in clause FIRST under "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—Collateral Trust Agreement— Order of Application." For the avoidance of doubt, Equipment Lease Obligations and Commercial Building Lender Obligations do not constitute Pari Passu Lien Obligations.

"*Pari Passu Lien Secured Parties*" means the holders of Pari Passu Lien Obligations, each Pari Passu Lien Debt Representative and the Collateral Agent.

"*Pari Passu Lien Security Documents*" means all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, consent or direct arrangements (including any Direct Agreements), or other grants or transfers for security executed and delivered by the Company or any other Grantor creating or perfecting (or purporting to create or perfect) or governing rights of enforcement with respect to, a Lien upon Collateral in favor of the Collateral Agent, for the benefit of any of the Pari Passu Lien Secured Parties, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms of the Intercreditor Agreement and as described under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—*Intercreditor Agreement—Amendment of Pari Passu Lien Security Documents*."

"*Paying Agent*" means any bank or trust company designated as a Paying Agent by or in accordance with Section 6.12 of the Bonds Indenture.

"*Permitted Asset Swap*" means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Company or any Restricted Subsidiary and another Person; *provided* that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Asset Sales."

"*Permitted Bond Hedge Transaction*" means any call or capped call option (or substantially equivalent derivative transaction) on the Company's common stock purchased by the Company in connection with the issuance of any Convertible Indebtedness; *provided* that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Company from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Company from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

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

"*Permitted Holder*" means (1) any of the Investors, Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of any such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Company and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Company or any Parent Company. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which any required Change of Control Offer is made in accordance with the requirements of the Bond Financing Agreement (or would have required a Change of Control Offer in the absence of the waiver of such requirement by Holders in accordance with the provisions of the Bond Financing Agreement) will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"*Permitted Investments*" means:

(1) any Investment in the Company or any Guarantor (including guarantees of obligations of the Guarantors);

(2) any Investment in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) any Investment by the Company or any Restricted Subsidiary in a Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business, or in a business unit, line of business or division of such Person, if as a result of such Investment: (a) such Person becomes a Restricted Subsidiary (and in the event such Investment was made by the Company or a Guarantor, becomes a Guarantor); or (b) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting such business unit, line of business or division in which such Investment was made, as applicable, to, or is liquidated into, the Company or a Restricted Subsidiary (and in the event such Investment was made by the Company or a Guarantor, such amalgamation, merger, consolidation, transfer or conveyance is made to a Guarantor); and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale permitted pursuant to Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Asset Sales" or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on such date or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on such date; *provided* that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on such date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under the Bond Financing Agreement;

(6) any Investment by the Company or any Restricted Subsidiary: (a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Company or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer); (b) in satisfaction of judgments against other Persons; (c) as a result of a foreclosure by the Company or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or (d) as a result of the settlement, compromise or resolution of (A) litigation, arbitration or other disputes or (B) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Company or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 6.03(b)(11) of the Bond Financing Agreement and in clause (11) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock"

(8) any Investment in a Similar Business, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (a) $80 million and (b) 50% of Consolidated EBITDA of the Company and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

(9) Investments the payment for which consists of, or are funded by the sale of, Equity Interests (other than Disqualified Stock) of the Company or any Parent Company or are funded from cash equity contributions to the capital of the Company; *provided* that such Equity Interests, the proceeds from the sale of any such Equity Interests, and such contributions to the capital of the Company, will not increase the amount available for Restricted Payments under Section 6.01(a)(3) of the Bond Financing Agreement and clause (a)(3) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments;"

(10) (a) guarantees of Indebtedness permitted under Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice and (b) the creation of Liens on the assets of the Company or any Restricted Subsidiary in compliance with Section 6.06 of the Bond Financing Agreement as described in "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Liens;"

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 6.05(b) of the Bond Financing Agreement (except transaction described in clauses (2), (6), (10), (16) and (23) thereof) and of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Transactions with Affiliates" (except transactions described in clause (b)(2), (b)(6), (b)(10), (b)(16) or (b)(23) of such covenant);

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

(13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (a) $80 million and (b) 50% of Consolidated EBITDA of the Company determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Company, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation in connection therewith (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Company or any Restricted Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, members of management and independent contractors not in excess of $2.0 million outstanding at any one time, in the aggregate;

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, including pursuant to Management Services Agreements, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Company or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Company or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Company or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;

(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (a) $40 million and (b) 30% of Consolidated EBITDA of the Company and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

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

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Company or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(26) any Investment, constituting Indebtedness, by the Company or a Subsidiary Guarantor, in a Restricted Subsidiary that is not a Wholly-Owned Subsidiary of the Company or such Guarantor, the net proceeds of which are used by such Restricted Subsidiary to make any Capital Expenditures for the purpose of increasing the earnings capacity in such Restricted Subsidiary, in a Similar Business; *provided* that (i) such Investment is secured by a first priority Lien on all of the assets and property of such Restricted Subsidiary that would constitute Fixed Asset Priority Collateral if such property or assets were Collateral (prior to all Liens on such assets and property that would constitute ABL Priority Collateral if such assets and property were Collateral), (ii) such Investment is collaterally assigned in favor of the Collateral Agent as Fixed Asset Priority Collateral and (iii) the assets and property of such Restricted Subsidiary (other than assets and property that would constitute ABL Priority Collateral if such assets and property were Collateral) are not otherwise subject to any Lien other than Permitted Restricted Subsidiary Liens;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Company and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Company or any Subsidiary of the Company in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Company or any direct or indirect parent of the Company, to the extent no cash is actually advanced by the Company or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens;"

(31) loans and advances to any direct or indirect parent of the Company in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with the covenant contained in Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments" at such time, such Investment being treated for purposes of the applicable clause of such covenant in Section 6.01 of the Bond Financing Agreement or the corresponding section of the Limited Offering Memorandum, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;

(32) any other Investments if on a *pro forma* basis after giving effect to such Investment, the Total Net Leverage Ratio would be equal to or less than 3.00 to 1.00 as of the last day of the Test Period most recently ended;

(33) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Asset Sales;" and

(34) Permitted Bond Hedge Transactions.

For purposes of determining compliance with this definition, (A) an Investment need not be incurred solely by reference to one category of Permitted Investments described in this definition but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that an Investment (or any portion thereof) meets the criteria of one or more of the categories of Permitted Investments, the Company will, in its sole discretion, classify or reclassify such Investment (or any portion thereof) in any manner that complies with this definition and with Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments."

"*Permitted Liens*" means, with respect to any Person:

(1) Liens securing Obligations in respect of the Bond Financing Agreement and Series 2020 Note, the 2019 Bond Financing Agreement and the Series 2019 Note and any guarantees thereof, the Senior Secured Notes and any guarantees thereof and the Guarantees;

(2) Liens securing Obligations in respect of Indebtedness permitted to be incurred under any Credit Facility, including any letter of credit facility relating thereto, that was permitted by the terms of Section 6.03(b)(1) of the Bond Financing Agreement and clause (1) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" provided that any such Lien will be subject to the Intercreditor Agreement, as required therein;

(3) Liens securing Other Pari Passu Lien Obligations permitted to be incurred pursuant to Section 6.03(b)(2) of the Bond Financing Agreement and clause (2) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" provided that any such Lien will be subject to the Collateral Trust Agreement and the Intercreditor Agreement, as required therein;

(4) Liens securing Pari Passu Lien Obligations in respect of Indebtedness permitted to be incurred under Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" provided that at the time of incurrence (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving pro forma effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time-to-time, without further compliance with this subclause) and after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Company's Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred would not exceed 3.00 to 1.00; *provided* that any such Lien will be subject to the Collateral Trust Agreement and the Intercreditor Agreement, as required therein;

(5) Liens, pledges or deposits by such Person made in connection with (A) workers' compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations, (B) insurance-related obligations (including, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance, or otherwise supporting the payment of items set forth in the foregoing clause (A), or (C) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness), or deposits to secure public or statutory obligations of such Person or deposits of cash, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(6) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction and mechanics' Liens and other similar Liens, or similar landlord Liens specifically created by contract, and (i) for sums not yet overdue for a period of more than 60 days or, if more than 60 days overdue, are unfiled and no other action has been taken to enforce such Liens or (ii) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(7) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

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

(9) survey exceptions, encumbrances, covenants, conditions, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television 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 or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person;

(10) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to Section 6.03(b), clauses (5), (7), (14), (15) or (16) of the Bond Financing Agreement and as described in clauses (5), (7), (14), (15) or (16) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" *provided* that: (a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to Section 6.03(b)(14) of the Bond Financing Agreement and clause (14) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), plus improvements, accessions, proceeds or dividends or distributions in respect thereof and After-Acquired Property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness incurred under Section 6.03(b)(5) or (14) of the Bond Financing Agreement and clause (5) or (14) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," (b) [Reserved], (c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to Section 6.03(b)(5) of the Bond Financing Agreement and clause (5) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" extend only to the assets so purchased, constructed, replaced, leased or improved and proceeds and products thereof; *provided, further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty, (d) Liens securing Obligations in respect of Indebtedness permitted to be incurred pursuant to Section 6.03(b)(15)(b) of the Bond Financing Agreement and clause (15)(b) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" are solely on acquired property or the assets of the acquired entity, and (e) Liens securing Obligations in respect of Indebtedness permitted to be incurred pursuant to Section 6.03(b)(15) of the Bond Financing Agreement and clause (15) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," after giving *pro forma* effect to such Indebtedness secured by such Lien and the application of the net proceeds therefrom, the Company's Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, would (a) be no less than the Senior Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Indebtedness secured by such Lien or (b) not exceed 3.00 to 1.00;

(11) Liens existing, or provided for under binding contracts existing, on the Closing Date (other than Liens securing Obligations under the Term Loan Credit Agreement, the ABL Facility, to secure the 2019 Bond Financing Agreement and related guarantees or to secure the Senior Secured Notes and related guarantees, the Obligations under the Bond Financing Agreement and related Guarantees);

(12) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary); and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by the Bond Financing Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(13) Liens on property or other assets at the time the Company or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Company or any Restricted Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by the Bond Financing Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(14) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be incurred in accordance with Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;"

(15) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services;

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

(17) leases, subleases, licenses or sublicenses (or other agreement under which the Company or any Restricted Subsidiary has granted rights to end users to access and use the Company's or any Restricted Subsidiary's products, technologies or services) that do not either (a) materially interfere with the business of the Company and its Restricted Subsidiaries, taken as a whole, or (b) secure any Indebtedness;

(18) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Company and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(19) Liens in favor of the Company or any Guarantor;

(20) Liens on equipment or vehicles of the Company or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(21) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility and Liens on any receivables transferred in connection with a Receivables Financing Transaction, including Liens on such receivables resulting from precautionary Uniform Commercial Code filings or from recharacterization of any such sale as a financing or a loan;

(22) Liens to secure any modification, refinancing, refunding, extension, renewal, replacement or defeasance (or successive modification, refinancing, refunding, extensions, renewals, replacements or defeasances) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (1), (3), (4), (10), (11), (12), (13) or this clause (22) of this definition; *provided* that (a) such new Lien will be limited to all or part of the same property that secured the original Lien (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and After-Acquired Property) and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (1), (3), (4), (10), (11), (12), (13) or this clause (22) of this definition at the time the original Lien became a Permitted Lien under the Bond Financing Agreement, *plus* (ii) any accrued and unpaid interest on the Indebtedness being so modified, refinanced, extended, replaced, refunded, renewed or defeased *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness or the modification, extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness; *provided, further* that that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clauses (4) or (10), the principal amount of any Indebtedness Incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clauses (4) or (10) and not this clause (22) for purposes of determining the principal amount of Indebtedness outstanding under clause (4) or (10);

(23) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens or insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(24) other Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) $100.0 million and (ii) 60% of Consolidated EBITDA of the Company and the Restricted Subsidiaries determined at the time of incurrence of such Lien for the most recently ended Test Period (calculated on a pro forma basis);

(25) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(26) (i) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (ii) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (iii) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(27) Liens securing judgments for the payment of money not constituting an Event of Default under Section 7.07 of the Bond Financing Agreement and clause (g) of the provisions described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Events of Default;"

(28) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice, and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of set off) and that are within the general parameters customary in the banking industry;

(29) Liens deemed to exist in connection with Investments in repurchase agreements permitted under the Bond Financing Agreement; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(30) Liens that are contractual rights of set-off (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Company and its Restricted Subsidiaries or (c) relating to purchase orders and other agreements entered into with customers of the Company or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(31) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(32) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(33) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under the Bond Financing Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted pursuant to Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Asset Sales;"

(34) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Company or any of its Subsidiaries are located; provided such ground leases, subleases, licenses or sublicenses do not materially impair the use of the remainder of the Mortgaged Property and are subordinate to the lien of the Mortgages;

(35) Liens in connection with a Specified Sale and Lease-Back Transaction and any leasehold mortgage or similar Lien on the associated Lease;

(36) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(37) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Company or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(38) deposits of cash with the owner or lessor of premises leased and operated by the Company or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Company and such Subsidiary to secure the performance of the Company's or such Subsidiary's obligations under the terms of the lease for such premises;

(39) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(40) Liens on cash and Cash Equivalents used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under the Bond Financing Agreement;

(41) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(42) agreements to subordinate any interest of the Company or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Company or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(43) Liens securing Guarantees of any Indebtedness or other obligations otherwise permitted to be secured by a Lien under the Bond Financing Agreement;

(44) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any environmental law;

(45) Liens disclosed by the title insurance reports or policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by the Bond Financing Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(46) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Company or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(47) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with;

(48) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(49) zoning, building and other similar land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements; *provided* that such restrictions and agreements are complied with;

(50) Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable law;

(51) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose; and

(52) any Lien contemplated by clause (26) of the definition of "Permitted Investments."

If any Liens are incurred to secure obligations incurred to refinance obligations initially incurred in reliance on a basket measured by reference to a percentage of Consolidated EBITDA, and such refinancing would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, plus any accrued and unpaid interest on the Indebtedness (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such refinancing Indebtedness) *plus* the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness. For purposes of this definition, the term "Indebtedness" will be deemed to include interest and other obligations payable on and with respect to such Indebtedness.

"Permitted Prior Lien" means any Lien that has priority over the Lien of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties which Lien was permitted under each Pari Passu Lien Debt Document.

"*Permitted Restricted Subsidiary Liens*" means clauses (5) through (9), (10) (with respect to clauses (5), (7) and (14) of Section 6.03(b) of the Bond Financing Agreement and the same clauses of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" *provided* that, with respect to such clause (14), only with respect to such clause (5)), (12) through (21), (22) (with respect to clauses (12), (13) and (22)), (23) through (35), (37) through (42), (44) through (49), (51) and (52) of the definition of "Permitted Liens."

"*Permitted Warrant Transaction*" means any call option, warrant or right to purchase (or substantially equivalent derivative transaction) on the Company's or a Parent Company's common stock sold by the Company or a Parent Company substantially concurrently with a related Permitted Bond Hedge Transaction.

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

"*Phase II Project*" means any capacity addition, line extension or addition of value-added product facilities, in a Similar Business, at the steel mini-mill located in Mississippi County, Arkansas.

"*Phase II Project Costs"* means all costs and expenses to be incurred by Parent, the Company or any Restricted Subsidiary in connection with the Development of the Phase II Project, and incurred after August 23, 2017, including, without limitation, the purchase of equipment and related services, the training of personnel relating to the Phase II Project, the financing of the Phase II Project, including interest expense incurred during Development, and activities reasonably related thereto.

"*Post-Petition Interest*" means interest, fees, expenses and other charges that pursuant to the ABL Credit Agreement, the Term Loan Credit Agreement, the 2019 Bond Financing Agreement, the Notes Indenture or any other Fixed Asset Pari Passu Lien Debt Documents (including the Bond Financing Agreement and any Specified Pari Passu Lien Debt Documents), continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

"*Predecessor Bond*" of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 3.07 of the Bond Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in said Section 3.07, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

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

"*Principal Account*" means the account of that name established in the Debt Service Fund pursuant to Section 5.01(a) of the Bond Indenture.

"*Principal Payment Date*" means any date on which any amounts payable with respect to the principal of the Bonds shall become due, whether upon redemption (including without limitation sinking fund redemption), acceleration, maturity or otherwise.

"*Project"* means the construction, start-up and operation and maintenance by the Company of one or more flat-roll steel mini mills constructed or to be constructed on land located in Mississippi County, Arkansas.

"Project Costs" means all costs and expenses incurred by the Grantors and their Subsidiaries in connection with the ownership, occupation, construction, testing, starting, repair, operation, maintenance and use of the Project, the training of personnel relating to the Project, the financing of the Project and activities reasonably related thereto, in each case incurred prior to August 23, 2017.

"*Public Company Costs*" means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Company's or its Restricted Subsidiaries' initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

"*Purchase Agreement*" means the Bond Purchase Agreement with respect to the 2020 Bonds, dated the date of the Limited Offering Memorandum, by and among the Bond Issuer, the Company and the Underwriter, and any similar agreement with respect to Additional Bonds.

"*Purchase Money Obligations*" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

"*Qualified Capital Contribution*" means cash common equity capital contributions to, or cash proceeds from the issuance of Capital Stock in, Big River Steel Holdings LLC, a Delaware limited liability company, which Big River Steel Holdings LLC, upon receipt, contributes to Parent, which in turn, upon receipt, contributes to the Company.

"Qualified Equity Interests" means Equity Interests that are not Disqualified Stock.

"*Qualified Institutional Buyer*" has the meaning set forth in Rule 144A promulgated under the Securities Act of 1933, as amended.

"*Qualified Investments*" means (a) any of the following: bonds, debentures, notes or other evidence of indebtedness, other than subordinated or junior bonds, debentures, notes or other evidence of indebtedness, issued or guaranteed, other than on a subordinated or junior basis, by any of the following federal agencies, and any other agency or other instrumentality subsequently created by an act of the United States Congress, which are not backed by the full faith and credit of the United States of America: U.S. Export-Import Bank (Eximbank) direct obligations or fully guaranteed certificates of beneficial ownership; Farmers Home Administration certificates of beneficial ownership; securities of the Federal Financing Bank; Federal Housing Administration debentures; General Services Administration participation certificates; Federal National Mortgage Association senior debt obligations and mortgage-backed securities; Federal Home Loan Mortgage Corporation senior debt obligations and mortgage-backed securities; Federal Farm Credit Bank senior debt obligations and mortgage-backed securities; Government National Mortgage Association guaranteed mortgage-backed bonds and guaranteed pass-through obligations; Student Loan Marketing Association senior debt obligations; U.S. Maritime Administration guaranteed Title XI financing obligations; and U.S. Department of Housing and Urban Development project notes, local authority bond, new communities debentures-U.S. government guaranteed debentures and U.S. public housing notes and bonds-U.S. government guaranteed public housing notes and bonds and (b) securities evidencing ownership of the right to payment of specific principal or interest payments on an obligation described in (a) above, provided that such securities were created by or on behalf of the issuer of the applicable obligation and are held in the custody of a bank or trust company having a reported capital, surplus and undivided profits of at least $25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short-term category by at least one Rating Agency, in a special account separate from the general assets of such custodian.

"*Qualified Proceeds*" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"*Qualified Securitization Facility*" means any Securitization Facility (1) constituting a securitization financing facility that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and the applicable Restricted Subsidiary or Securitization Subsidiary and (b) all sales and/or contributions of Securitization Assets and related assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Company) or (2) constituting a receivables financing facility.

"*Quotation Agent*" means BofA Securities, Inc. or another bank, underwriter, or financial institution determined by the Company and reasonably acceptable to the Bond Issuer.

"*Rating*" means the credit rating of the Bonds by the Rating Agencies.

"*Rating Agencies*" means Moody's and S&P or if Moody's or S&P or if both do not make a rating on the Bonds publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company which will be substituted for Moody's or S&P or both, as the case may be.

"*Ratings Reaffirmation*" means in the case of an event or proposed event, a reaffirmation by either of the Rating Agencies rating the Bonds that the then current Ratings on the 2020 Bonds will not be lower, after giving effect to the event or proposed event, than the Ratings of the 2020 Bonds in effect immediately prior to such event or proposed event.

"*Real Estate Asset*" means, at any time of determination, any interest (fee, leasehold or otherwise) of any Grantor in any real property, including Mortgaged Premises, distribution centers and warehouses and corporate headquarters and administrative offices.

"*Rebate Fund*" means the fund of that name established pursuant to Section 5.01(c) of the Bond Indenture.

"*Receivables Financing Transaction*" means any transaction or series of transactions entered into by the Company, BRS Finance Corp. or any Restricted Subsidiary pursuant to which such party consummates a "true sale" of its receivables to a nonrelated third party on market terms as determined in good faith by the Company; *provided* that such Receivables Financing Transaction is (i) non-recourse to Parent, the Company, BRS Finance Corp. and the Restricted Subsidiaries and their assets, other than any recourse solely attributable to a breach by Parent, the Company, BRS Finance Corp. or any Restricted Subsidiary of representations and warranties that are customarily made by a seller in connection with a "true sale" of receivables on a non-recourse basis and (ii) consummated pursuant to customary contracts, arrangements or agreements entered into with respect to the "true sale" of receivables on market terms for similar transactions.

"*Redemption Account*" means the account of that name established in the Debt Service Fund pursuant to Section 5.01(a) of the Bond Indenture.

"*Redemption Date*" means a date on which the 2020 Bonds are subject to redemption pursuant to the terms of the Bond Indenture.

"*Refinance*" has the meaning assigned in the definition of "*Refinancing Indebtedness*" and "*Refinancing*" and "*Refinanced*" have meanings correlative to the foregoing.

"*Refinanced Debt*" has the meaning assigned to such term in the definition of "Refinancing Indebtedness".

"*Refinancing Indebtedness*" means (x) Indebtedness incurred by the Company or any Restricted Subsidiary, (y) Disqualified Stock issued by the Company or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease ("*Refinance*") any Indebtedness, Disqualified Stock or Preferred Stock, including Refinancing Indebtedness, so long as: (1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) the Indebtedness, the amount of the Preferred Stock or the liquidation preference of the Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the "*Refinanced Debt*"), *plus* (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, *plus* (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c), the "*Incremental Amounts*"); (2) such Refinancing Indebtedness has a: (a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; (b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the maturity date of the Bonds; and (3) to the extent such Refinancing Indebtedness Refinances (i) Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Restricted Payments," such Refinancing Indebtedness is subordinated to the Bonds or the Guarantee thereof at least to the same extent as the applicable Refinanced Debt or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively. Refinancing Indebtedness will not include: (a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not a Subsidiary Guarantor that refinances Indebtedness or Disqualified Stock of the Company; (b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not a Subsidiary Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or (c) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary; and, *provided*, *further* that (x) clause (2) of this definition will not apply to any Refinancing of any Indebtedness other than Indebtedness incurred under Section 6.03(b)(3) of the Bond Financing Agreement and clause (3) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof), Disqualified Stock and Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary "rollover" provisions and (y) assuming such credit facility were to be extended pursuant to such "rollover" provisions, such extended credit facility would comply with clause (2) of this definition).

"*Register*" means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to the Bond Indenture.

"*Registrar*" means the Trustee, or any successor Registrar which shall have become such pursuant to applicable provisions of the Bond Indenture.

"*Regular Record Date*" means the close of business on the fifteenth day preceding each Interest Payment Date.

"*Regulations*" means Treasury Regulations promulgated pursuant to the Code.

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

"*Required Term Lenders*" means the "Required Lenders" (or an equivalent term with substantially similar meaning) under and as defined in the Term Loan Credit Agreement.

"*Required Delayed Draw Term Lenders*" means the "Required Senior Term Lenders" (or an equivalent term with substantially similar meaning as the meaning of such term in the Original KfW Credit Agreement) under and as defined in the Specified Pari Passu Lien Debt Documents.

"*Responsible Officer*" means, with respect to a Person, the chief executive officer, chief operating officer, president, executive vice president, director of finance, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person. Unless otherwise specified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Company.

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

"*Restricted Subsidiary*" means, at any time, any direct or indirect Subsidiary of the Company (including any Foreign Subsidiary and BRS Finance Corp.) that is not then an Unrestricted Subsidiary; *provided* that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of "Restricted Subsidiary". Wherever the term "Restricted Subsidiary" is used with respect to any Subsidiary of a referenced Person that is not the Company, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Company on a *pro forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Company (unless such transactions would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a *pro forma* basis in accordance with the Bond Financing Agreement).

"*Revenue Account*" means the account entitled the "Revenue Account" held by the Depository Bank under the Deposit Agreement.

"*S&P*" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"*Sale and Lease- Back Transaction*" means any arrangement providing for the leasing by the Company or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a third Person in contemplation of such leasing. The net proceeds of any Sale and Lease-Back Transaction will be determined giving effect to transaction expenses and the tax effect of such transactions (including taxes paid or payable and tax attributes used as a result of such transactions).

"*Sanctions"* means any sanctions administered or enforced by the U.S. Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury, or the U.S. Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person," the European Union, Her Majesty's Treasury, the United Nations Security Council, or other relevant sanctions authority.

"*SCF*" means Stonebriar Commercial Finance LLC, a Delaware limited liability company.

"*SEC*" means the U.S. Securities and Exchange Commission or any governmental authority succeeding to any of its principal functions.

"*Second Specified Pari Passu Lien Debt Threshold Date*" means the date, after the occurrence of the First Specified Pari Passu Lien Debt Threshold Date, on which the sum of (1) the outstanding principal amount of the term loans under the Specified Pari Passu Lien Debt Documents plus (2) from and after the occurrence of the Initial Funding Date, the commitments under the Specified Pari Passu Lien Debt Documents subject to the Specified Commitment Condition is less than 50% of the aggregate outstanding principal amount of all Pari Passu Lien Debt or less than the aggregate outstanding principal amount of the largest Series of Pari Passu Lien Debt other than the Pari Passu Lien Debt incurred under the Specified Pari Passu Lien Debt Documents.

"*Secured Hedging Obligations*" means any Hedging Obligations under a Hedge Agreement entered into between the Company or another Grantor and a Hedge Bank or any guarantee thereof by the Company or another Grantor.

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

"*Secured Parties*" means (a) the Collateral Agent, (b) each Holder, (c) the Trustee, (d) each other Pari Passu Lien Secured Party and (e) the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, all former Collateral Agent, Holder, Trustee and the Pari Passu Lien Secured Party to the extent that any Obligations owing to such Persons were incurred while such Persons were Collateral Agent, Holder, Trustee or Pari Passu Lien Secured Party and such Obligations have not been paid or satisfied in full.

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

"*Securitization Assets*" means (a) the accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof and

(b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

"*Securitization Facility*" means any transaction or series of securitization financings that may be entered into by the Company or any Restricted Subsidiary pursuant to which the Company or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Company or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Company or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Company or any of its Subsidiaries.

"*Securitization Fees*" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

"*Securitization Subsidiary*" means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

"*Security Documents*" means the Collateral Trust Agreement, each Additional Pari Passu Lien Debt Designation, each of the other Pari Passu Lien Security Documents, each of the other security agreements, pledge agreements, mortgages, deeds of trust, collateral assignments, agreements creating a security interest, charge or encumbrance of any kind, and related agreements, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating the security interests in the Collateral as contemplated by the Collateral Trust Agreement.

"*Senior Indebtedness*" means:

(1) all Indebtedness of the Company or BRS Finance Corp. or any Subsidiary Guarantor outstanding under the Term Loan Credit Agreement, the Notes Indenture and related guarantees, the 2019 Bond Financing Agreement and related guarantees, the ABL Facility and the Bond Financing Agreement and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Company or BRS Finance Corp. or any Subsidiary Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts and all obligations of the Company or BRS Finance Corp. or any Subsidiary Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(2) all (a) Hedging Obligations (and guarantees thereof) and (b) obligations in respect of Cash Management Services (and guarantees thereof), in the case of each of clauses (a) and (b), owing to a lender under the Term Loan Credit Agreement, the ABL Facility or any Affiliate of such lender (or any Person that was a lender or an Affiliate of such lender at the time the applicable agreement giving rise to such Hedging Obligation or Cash Management Obligations was entered into); *provided* that such Hedging Obligations and obligations in respect of Cash Management Services, as the case may be, are permitted to be incurred under the terms of the Bond Financing Agreement;

(3) any other Indebtedness of the Company or BRS Finance or any Subsidiary Guarantor permitted to be incurred under the terms of the Bond Financing Agreement, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Obligations under the Bond Financing Agreement or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clauses (1), (2) and (3); *provided* that Senior Indebtedness will not include: (a) any obligation of such Person to the Company or any of its Subsidiaries; (b) any liability for federal, state, local or other taxes owed or owing by such Person; (c) any accounts payable or other liability to trade creditors arising in the ordinary course of business or consistent with industry practice; (d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or (e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of the Bond Financing Agreement.

"*Senior Secured Net Leverage Ratio*" means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding on the last day of such Test Period *minus* the aggregate amount of cash and Cash Equivalents of the Company and the Restricted Subsidiaries on such date that (x) would not appear as "restricted" on a consolidated balance sheet of the Company and the Restricted Subsidiaries or (y) are restricted in favor of the lenders or investors under the Term Loan Credit Agreement, the ABL Facility or Other Pari Passu Lien Obligations, to (b) Consolidated EBITDA of the Company for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* provisions set forth in the definition of Fixed Charge Coverage Ratio.

"*Senior Secured Notes*" means $600.0 million aggregate principal amount of 7.250% Senior Secured Notes issued by the Company and BRS Finance Corp., as co-issuers.

"*Series*" means Bonds identified as a separate series that are authenticated and delivered on original issuance and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Bond Indenture, or any Supplemental Indenture.

"*Series 2020 Construction Account*" means the account of that name established in the Construction Fund pursuant to Section 5.01(b) of the Bond Indenture.

"*Series 2020 Costs of Issuance Account*" means the account of that name established in the Construction Fund pursuant to Section 5.01(b) of the Bond Indenture.

"*Series 2020 Note*" means the Closed End Line of Credit Promissory Note, Series 2020, dated the Closing Date, from the Company to the Bond Issuer, and assigned to the Trustee, issued to secure the Company's obligations under the Bond Financing Agreement, and any other promissory note delivered in connection with Additional Bonds.

"*Series of Pari Passu Lien Debt*" means, severally, Funded Debt under the Term Loan Credit Agreement, the Notes Indenture, the Specified Pari Passu Lien Debt Documents, the 2019 Bond Financing Agreement, the Bond Financing Agreement, and each other issue or series of Pari Passu Lien Debt for which a single transfer register is maintained.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date; *provided* that notwithstanding the foregoing, in no event will any Securitization Subsidiary be considered a Significant Subsidiary for purposes of Sections 7.05, 7.06 and 7.07 of the Bond Financing Agreement and clauses (e), (f) and (g) of the provisions described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Events of Default."

"*Similar Business*" means (1) any business conducted or proposed to be conducted by the Company or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses which the Company and its Restricted Subsidiaries conduct or propose to conduct as of the Closing Date.

"*SMS Direct Agreement*" means that certain direct agreement dated as of May 31, 2019 by and among the Borrower, SMS Site Services Inc., SMS Group GMBH and the Collateral Agent.

"*Solvent*" and "*Solvency*" mean, with respect to any Person on any date of determination, that on such date:

(1) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise,

(2) the present fair saleable value of the property of such Person is 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,

(3) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and

(4) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

"*Special Record Date*" means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to the Bond Indenture.

"Specified Access Period" means for the Commercial Building Collateral or the Equipment Lease Collateral, as the case may be, the period, which begins on the earlier of (i) the day on which the ABL Agent provides the Commercial Building Lender or the Equipment Lessor, as the case may be, with an enforcement notice described in the Intercreditor Agreement and as described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement;" and (ii) the date on which the Commercial Building Lender or SCF, as the case may be, provides the ABL Agent with the notice required pursuant to the Intercreditor Agreement and as described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2020 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement that the Commercial Building Lender or the Equipment Lessor (or any of their agents), as the case may be, has either obtained possession or control of such Commercial Building Collateral or Equipment Lease Collateral, as applicable, or sold or otherwise disposed of such Commercial Building Collateral or Equipment Lease Collateral, as applicable, and ends on the earliest of (A) the 180th day after such date; (B) the date on which all or substantially all of the ABL Priority Collateral located on the Commercial Building Collateral and the Equipment Lease Collateral is sold, collected or liquidated; and (C) the Discharge of ABL Obligations.

"*Specified Commitment Condition*" has the meaning specified in the definition of Initial Funding Date.

"*Specified Pari Passu Lien Debt Representative*" means KfW IPEX-Bank GmbH, whether acting in its own capacity or as agent to the lenders under any Specified Pari Passu Lien Debt Document or any of its Affiliates, or any other such representative that has been designated as "Specified Pari Passu Lien Debt Representative" by the Company in accordance with the Collateral Trust Agreement, that delivers a Collateral Trust Joinder in the form of Exhibit B to the Collateral Trust Agreement.

"*Specified Pari Passu Lien Debt*" means the Indebtedness incurred pursuant to the Specified Pari Passu Lien Debt Documents.

"*Specified Pari Passu Lien Debt Documents*" means (a) any credit agreement described in the Collateral Trust Joinder delivered by the Specified Pari Passu Lien Debt Representative governing Funded Debt that is designated by the Company as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement and (b) any other credit agreement entered into subsequent to the delivery of the Collateral Trust Joinder described in clause (a) above governing another Series of Pari Passu Lien Debt for which the Specified Pari Passu Lien Debt Representative maintains the transfer register and is appointed as a representative of the Pari Passu Lien Debt (for purposes related to the administration of the Pari Passu Lien Security Documents) pursuant to such credit agreement or other agreement and which governs Funded Debt that is designated by the Company as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement; provided, however, that no credit agreement may be designated as, or deemed to be, a "Specified Pari Passu Lien Debt Document" if such credit agreement provides for any of the following: (i) payment of interest in cash rather than solely in kind during a Specified SPOC Period, (ii) scheduled amortization payments of principal or other repayments of principal during a Specified SPOC Period (it being understood that such credit agreement will have scheduled amortization payments of principal following the expiration of the Specified SPOC Period and that none of the foregoing shall prohibit the payment of interest in cash or payment of principal during the Specified SPOC Period as long as such payment is in each case funded solely with the proceeds of Qualified Capital Contributions), or (iii) the scheduled final maturity of the Funded Debt evidenced thereby that is prior to the scheduled final maturity of the Senior Secured Notes.

"*Specified Sale and Lease-Back Transaction*" means any arrangement providing for the leasing by the Company or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a Governmental Authority in contemplation of such leasing, and which is in connection with the purchase by the Company or an Affiliate of industrial development revenue bonds, or similar instruments, of a Governmental Authority and pursuant to which payments of principal, premiums and interest thereon are payable solely from income derived by such Governmental Authority from such leasing arrangement, including the arrangement contemplated by the Act 9 Bond Documents solely to the extent that parties under the Act 9 Bond Documents "net settle" any and all payments under such arrangement pursuant to the terms thereof, including pursuant to the Home Office Payment Agreement, dated as of April 28, 2015.

"*Specified SPOC Period*" means a period after the Initial Funding Date ending on the earlier to occur of (i) 6 months following SPOC and (ii) 30 months following the Initial Funding Date.

"*Specified Transaction*" means (i) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Company, in each case, in connection with an acquisition or Investment, (ii) any designation of operations or assets of the Company or a Restricted Subsidiary as discontinued operations (as defined under GAAP), (iii) any Investment that results in a Person becoming a Restricted Subsidiary, (iv) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with the Bond Financing Agreement (v) any purchase or other acquisition of a business of any Person, or assets constituting a business unit, line of business or division of any Person, (vi) any Asset Sale (without regard to any de minimis thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Company or (b) of a business, business unit, line of business or division of the Company or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise, (vii) any operational changes identified by the Company that have been made by the Company or any Restricted Subsidiary during the Test Period or (viii) any Restricted Payment or other transaction that by the terms of the Bond Financing Agreement requires a financial ratio to be calculated on a *pro forma* basis.

"*SPOC*" means the "starting point of credit" as determined pursuant and in accordance with the OECD Rules and any then applicable policies and regulations of any relevant export credit agency.

"*Standstill Commencement Date*" has the meaning set forth in the definition of "CTA Parties Standstill

Period."

"*Subordinated Indebtedness*" means, with respect to the Obligations under the Bond Financing Agreement and the Series 2020 Note, (1) any Indebtedness of the Company that is by its terms subordinated in right of payment thereto, and (2) any Indebtedness of any Guarantor that is by its terms subordinated in right of payment to the Guarantee of such entity of the Obligations under the Bonds Financing Agreement and the Series 2020 Note.

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

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.00% of the total voting power of Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which: (i) more than 50.00% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and (ii) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" refer to a Subsidiary or Subsidiaries of the Company**.**

"*Subsidiary Guarantee*" means the Guarantee of a Subsidiary Guarantor.

"*Subsidiary Guarantor*" means each Restricted Subsidiary of the Company, if any, that Guarantees the Obligations under the Bond Financing Agreement in accordance with the terms of the Guarantee (excluding any Parent Company that provides any such guarantees).

"*Supplemental Indenture*" means any indenture supplemental to the Bond Indenture entered into by and between the Issuer and the Trustee in accordance with Article VIII of the Bond Indenture.

"*Tax-Exempt Bonds*" means any Bonds, including the 2020 Bonds, the interest on which is (i) excludable from gross income for federal income tax purposes, except with respect to interest on any such Bond for any period during which such Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a "substantial user" or a "related person" to such a "substantial user" of the facilities financed or refinanced with the proceeds of such Bond, and (ii) an item of tax preference that is includable in alternative minimum taxable income for purposes of determining the alternative minimum tax.

"*Tax-Exempt Obligation*" means (a) any obligation the interest on which is excludable from gross income under Section 103(a) of the Code and which is rated at least "AA" or its equivalent by at least one Rating Agency and is not a "specified private activity bond" within the meaning of Section 57(a)(5)(C) of the Code, or (b) any interest in a regulated investment company, the income of which is at least 95% excludable to the holder under Section 103(a) of the Code, and which invests all its invested assets in obligations described in clause (a) hereof and is rated "Aam" or "AAm-G" or its equivalent by a Rating Agency.

"*Tax-Exempt Project*" has the meaning ascribed to such term in the Bond Financing Agreement.

"*Tax-Exempt Project Costs*" means any and all costs incurred by the Bond Issuer or the Company in connection with the acquisition, construction, and equipping, as the case may be, of the Tax Exempt Project, and all other costs permitted by the Act and the Code to be paid or reimbursed from the proceeds of the 2020 Bonds including, but not limited to, the following:

(i) (a) the cost of the preparation of plans and specifications (including any preliminary study or planning thereof or any aspect thereof), (b) the cost of acquisition and construction thereof and all construction, acquisition, and installation expenses required to provide utility services or other facilities and all real or personal properties deemed necessary in connection therewith (including development, architectural, engineering, and supervisory services with respect to any of the foregoing), and (c) any other costs and expenses relating to the acquisition, construction, and placing in service thereof;

(ii) the purchase price of the equipment in connection therewith, including all costs incident thereto, payment for labor, services, materials, and supplies used or furnished in site improvement and in the construction thereof, including all costs incident thereto, payment for the cost of the construction, acquisition, and installation of utility services or other facilities in connection therewith, payment for all real and personal property deemed necessary in connection therewith, payment of consulting and development fees in connection therewith, and payment for the miscellaneous expenses incidental to any of the foregoing items including the premium on any surety bond;

(iii) the fees or out-of-pocket expenses, if any, of those providing services with respect thereto, including, but not limited to, architectural, engineering, development and supervisory services;

(iv) any other costs and expenses relating to the Tax Exempt Project, including, without limitation, interest expense, that constitute costs or expenses for which the Company may expend 2020 Bond proceeds under the Act, but other than costs of issuance of the 2020 Bonds; and

(v) reimbursement to the Company for any costs described above paid by it, whether before or after the execution of the Bond Financing Agreement; provided, however, that reimbursement for any expenditures made prior to the execution of the Bond Financing Agreement, as applicable, from the Construction Fund shall only be permitted for expenditures meeting the requirements of the Regulations, including but not limited to, §1.150-2 of the Regulations.

"Term Loan" means the loan of the proceeds of the Term Loan Credit Agreement from the lenders and other entities party thereto to the Company, pursuant to the Term Loan Credit Agreement.

"*Term Loan Administrative Agent*" means Goldman Sachs Bank USA.

"*Term Loan Credit Agreement*" means the first lien secured term loan credit agreement, dated as of August 23, 2017, by and among the Company, Parent, Goldman Sachs Bank USA, as the administrative agent, and the lenders and other entities party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement thereof if such replacement thereof which has been designated as Additional Pari Passu Lien Debt under the Collateral Trust Agreement.

"*Test Period*" in effect at any time means the Company's most recently ended four consecutive fiscal quarters for which internal financial statements are available (as determined in good faith by the Company).

"*Top Parent*" means Big River Steel Parent LLC and any successor thereof.

"*Total Net Leverage Ratio*" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding on the last day of such Test Period *minus* the aggregate amount of cash and Cash Equivalents of the Company and the Restricted Subsidiaries on such date that (x) would not appear as "restricted" on a consolidated balance sheet of the Company or (y) are restricted in favor of the Term Loan Credit Agreement, the ABL Facility or Other Pari Passu Lien Obligations to (b) Consolidated EBITDA of the Company for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

"*Trust Estate*" has the meaning given to such term in the Bond Indenture.

"*Trust Estate Revenues*" means (a) the Bond Financing Payments, (b) all of the moneys received or to be received by the Bond Issuer or the Trustee in respect of payment of the amounts owing under the Bond Financing Agreement, (c) all moneys and investments in the Debt Service Fund (created and held under the Bond Indenture), (d) with regard to a Series of Bonds, the proceeds of such Series and investments thereof in the Construction Fund (or in any account or subaccount therein relating to such Series) created and held by the Trustee for the benefit of the Bond Issuer and the holders of the Bonds until expended, (e) with regard to any other Series of Bonds, all amounts on deposit in a debt service reserve fund (if any) held for the benefit of the holders of such Series of Bonds, and (f) all income and profit from the investment of the foregoing moneys. For the avoidance of doubt, with regard to (d) herein, any proceeds of a Series of Bonds constitute "Trust Estate Revenues" only for the Series from which such proceeds were derived and for no other Series of Bonds.

"*Trustee*" means the Trustee at the time acting on behalf of itself and the owners of the Bonds under the Bond Indenture, originally U.S. Bank National Association, as Trustee, and any successor Trustee as determined or designated under or pursuant to the Bond Indenture.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa- 777bbbb).

"*Unassigned Issuer's Rights*" shall have the meaning ascribed thereto in the Bond Financing Agreement.

"*Underwriter*" means, collectively, BofA Securities, Inc., Wells Fargo Securities, LLC, Goldman Sachs & Co. LLC, Crews & Associates, Inc. and Truist Securities, Inc.

"*Uniform Commercial Code*" or "*UCC*" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions of the Pari Passu Lien Security Documents relating to such perfection, priority or remedies.

"*Unrestricted Subsidiary*" means:

(1) any Subsidiary of the Company which at the time of determination is an Unrestricted Subsidiary (as designated by the Company, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Company may designate any Subsidiary of the Company (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Company or any Subsidiary of the Company (other than solely any Subsidiary of the Subsidiary to be so designated);

provided:

(1) such designation complies with Section 6.01 of the Bond Financing Agreement and as described in the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments;" and

(2) each of (a) the Subsidiary to be so designated and (b) its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary). The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to such designation, no Event of Default will have occurred and be continuing and the Company could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the Section 6.03(a) of the Bond Financing Agreement and of the first paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" and

(3) Any such designation by the Company will be notified by the Company to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"*Use of Proceeds Certificate*" means the Use of Proceeds Certificate and Agreement, dated the Closing Date, between the Bond Issuer and the Company with respect to the 2020 Bonds, as amended from time to time pursuant to the terms thereof.

"*USS Holdco*" means U.S. Steel Holdco LLC, a wholly-owned subsidiary of US Steel.

"*US Steel*" means United States Steel Corporation.

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

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing: (1) the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, *multiplied* by the amount of such payment; by (2) the sum of all such payments; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the "*Applicable Indebtedness*"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

"*Wholly-Owned Subsidiary*" of any Person means a Subsidiary of such Person, 100.00% of the outstanding Equity Interests of which (other than directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required under applicable law) is at the time owned by such Person and/or by one or more Wholly-Owned Subsidiaries of such Person.

"*Wholly-Owned Restricted Subsidiary*" is any Wholly-Owned Subsidiary that is a Restricted Subsidiary.

Exhibit 10.3.1

EXECUTION DRAFT

BOND FINANCING AGREEMENT

between

ARKANSAS DEVELOPMENT FINANCE AUTHORITY,

and each of

BIG RIVER STEEL LLC,

BRS FINANCE CORP.,

and

BRS INTERMEDIATE HOLDINGS LLC

Dated as of May 31, 2019

relating to

$487,000,000

Arkansas Development Finance Authority
Industrial Development Revenue Bonds
(Big River Steel Project),
Series 2019

The interest of Arkansas Development Finance Authority in this Bond Financing Agreement has been assigned (except for the Unassigned Issuer's Rights) pursuant to the Trust Indenture dated as of the date hereof between the Arkansas Development Finance Authority and U.S. Bank National Association, as trustee, and is subject to the security interest of U.S. Bank National Association, as trustee.

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BOND FINANCING AGREEMENT

THIS BOND FINANCING AGREEMENT, dated as of May 31, 2019 (this "Financing Agreement" or "Bond Financing Agreement"), is entered into between ARKANSAS DEVELOPMENT FINANCE AUTHORITY, a public body corporate and politic created and existing under the Act (the "Issuer" or "Bond Issuer"), and each of BIG RIVER STEEL LLC, a Delaware limited liability company (the "Company" or the "Borrower"), BRS FINANCE CORP., a Delaware corporation ("BRS Finance"), and BRS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company ("Holdings" or "Parent").

WITNESSETH:

WHEREAS, pursuant to and in accordance with the provisions of the Arkansas Development Finance Authority Act, Title 15, Chapter 5, Subchapters 1 through 3 of the Arkansas Code of 1987 Annotated (as amended, the "Act"), by appropriate action duly taken by the Board of Directors of the Issuer, and in furtherance of the purposes of the Act, the Issuer proposes to issue its Industrial Development Revenue Bonds (Big River Steel Project), Series 2019 (the "Series 2019 Bonds") under the Indenture (defined below), to provide funds, as provided herein, and to loan the proceeds of such Bonds to the Company pursuant to this Financing Agreement to provide financing and refinancing for a portion of the costs of the Tax-Exempt Project; and

WHEREAS, the Issuer proposes to loan the proceeds of the Series 2019 Bonds to the Company upon the terms and conditions set forth herein (the "BFA Loan"); and

WHEREAS, the Company has delivered to the Issuer its Series 2019 Promissory Note, in the form of Exhibit B attached hereto, dated May 31, 2019 (the "Series 2019 Note"), as evidence of its obligations with respect to the BFA Loan under this Financing Agreement; and

WHEREAS, the Issuer will enter into a Trust Indenture, dated as of even date herewith (the "Indenture"), with U.S. Bank National Association, as trustee (the "Trustee"), pursuant to which the Series 2019 Bonds will be issued; and

WHEREAS, to secure the obligations of the Company and the Guarantors under the Series 2019 Note and this Financing Agreement (collectively, the "BFA Loan Obligations"), the Trustee will execute a Joinder to the Collateral Trust Agreement and such obligations shall become entitled to the benefits of Pari Passu Lien Debt;

NOW, THEREFORE, for value received and for due consideration, the receipt and sufficiency of which are hereby acknowledged, and for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definition of Terms. Words and terms not otherwise defined herein shall have the meanings set forth in the Definitions Annex incorporated herein by this reference.

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

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(b)

(i) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Bond Document shall refer to such Bond Document as a whole and not to any particular provision thereof.

(ii) References in this Financing Agreement and any other Bond Document to the introductory paragraph, preliminary statements, an Exhibit, Schedule, Article, Section, clause or sub-clause refer (A) to the appropriate introductory paragraph, preliminary statements, Exhibit or Schedule to, or Article, Section, clause or sub-clause in, this Financing Agreement or (B) to the extent such references are not present in this Financing Agreement, to the Bond Document in which such reference appears.

(iii) The terms "include", "includes" and "including" are by way of example and not limitation.

(iv) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(v) The words "assets" and "property" shall be construed to have the same meaning and effect.

(vi) The word "or" is not exclusive.

(c) 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".

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

(e) Whenever in this Financing Agreement the Issuer, the Company or the Trustee is named or referred to, it shall include, and shall be deemed to include, its respective successors and permitted assigns whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of, and other provisions for the benefit of, the Issuer, the Company or the Trustee contained in this Financing Agreement shall bind and inure to the benefit of such respective successors and assigns and shall bind and inure to the benefit of any officer, board, commission, authority, agency or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Issuer or of its successors or permitted assigns, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions of this Financing Agreement.

(f) Nothing in this Financing Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any Person other than the Issuer and the Trustee, including their respective agents and indemnified persons (as such term is used in Section 10.03 hereof), the Company or the Holders and Beneficial Owners of the Bonds or any other Secured Party any right, remedy or claim under or by reason of this Financing Agreement or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this Financing Agreement contained by or on behalf of the Issuer or the Company shall be for the sole benefit of the Issuer, the Company and the Trustee, including their respective agents and indemnified persons (as such term is used in Section 10.03 hereof), and the Holders of the Bonds.

Section 1.03 Accounting Terms.

(a) 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 Financing Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. For the avoidance of doubt, for purposes of the Bond Documents, any obligation of a Person under a lease that is not (or would not be) required to be classified and accounted for as a capitalized lease on a balance sheet of such Person under GAAP, as in effect as of the Closing Date, shall not be treated as a capitalized lease as a result of the adoption of changes in GAAP or changes in the application of GAAP.

(b) All references herein to GAAP or any other accounting requirements shall refer to such requirements as are in use in the United States at the time of determination of any computation required or permitted hereunder, or, at the option of the Company, such requirements in use on the Closing Date.

Section 1.04 Rounding. Any financial ratios required to be maintained by the Company pursuant to this Financing Agreement (or required to be satisfied in order for a specific action to be permitted under this Financing 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 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organizational Documents, documents (including any Bond Document) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements, replacements, refinancings and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements, replacements, refinancings, and other modifications are not prohibited by any Bond Document; (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law and (c) references to any Person shall include such Person’s successors and permitted assigns.

Section 1.06 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 1.07 Certifications. All certificates and other statements required to be made by any director, officer, employee or member of management of the Company, any Guarantor or any of their respective Subsidiaries pursuant to any Bond Document are and will be made on the behalf of the Company, any such Guarantor or any of their respective Subsidiaries and not in such officer's, director's, employee's or member of management's individual capacity.

Section 1.08 Payment or Performance. When the payment of any obligation or the performance of any action, covenant, duty or obligation under any Bond Document is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day and such extension of time shall be reflected in computing interest or fees, as the case may be.

Section 1.09 Classification. Subject to Section 6.01(d)(i), for purposes of determining compliance at any time with Section 6.01, Section 6.02, Section 6.03, Section 6.05, Section 6.06 and Section 6.08, in the event that any Lien, Investment, Indebtedness, Disposition, Restricted Payment, affiliate transaction or prepayment of Indebtedness meets the criteria of more than one of the categories of transactions or items permitted pursuant to any clause of such Section 6.01, Section 6.02, Section 6.03, Section 6.05, Section 6.06 and Section 6.08, the Company, in its sole discretion, may classify and/or reclassify such transaction or item (or portion thereof) from time to time and will only be required to include the amount and type of such transaction (or portion thereof) in any one category.

ARTICLE II

REPRESENTATIONS OF THE ISSUER

The Issuer makes the following representations and warranties to the Company on the Closing Date:

Section 2.01 Constituted Authority. The Issuer is a public body corporate and politic created and existing under the Act. Under the provisions of the Act and applicable laws of the State of Arkansas, the Issuer is authorized to enter into the transactions contemplated by this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder.

Section 2.02 Suitability for Purpose. Based upon representations of the Company, the Tax-Exempt Project constitutes a "industrial enterprise" within the meaning of the Act. The Issuer makes no representation or warranty concerning the suitability of the Tax-Exempt Project or the Project for the purpose for which they are being undertaken by the Company. The Issuer has not made any independent investigation as to the feasibility of the Tax-Exempt Project or the Project or the creditworthiness of the Company. Any bond purchaser, assignee of this Financing Agreement or any other party with any interest in this transaction shall make its own independent investigation as to the creditworthiness and feasibility of the Tax-Exempt Project and the Project, independent of any representation or warranty of the Issuer. Act. The Issuer hereby finds and determines that all requirements of the Act with respect to the issuance of the Series 2019 Bonds and the execution of this Financing Agreement by the Issuer have been complied with and that issuing the Series 2019 Bonds and entering into this Financing Agreement by the Issuer will be in furtherance of the purposes of the Act.

Section 2.04 Due Power and Authorization. Under the provisions of the Act, the Issuer has full legal right, power and authority to enter into the transactions contemplated by this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder. By proper action, the Issuer has duly authorized the execution, delivery and performance of its obligations under this Financing Agreement and the Indenture.

Section 2.05 Binding Effect. This Financing Agreement and the Indenture each constitutes the legal, valid, and binding limited obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally from time to time in effect, and rights of acceleration, indemnity, and contribution, and the availability of equitable remedies may be limited by equitable principles.

Section 2.06 Resolution. The issuance and sale of the Series 2019 Bonds; the execution and delivery of this Financing Agreement and the assignment of this Financing Agreement and the Series 2019 Note to the Trustee (other than the Unassigned Issuer's Rights); and the performance of all covenants and agreements of the Issuer contained in the Series 2019 Bonds, the Use of Proceeds Certificate and this Financing Agreement have been duly authorized by resolutions of the governing body of the Issuer adopted at meetings thereof duly called and held by the affirmative vote of not less than a majority of a quorum present at such meeting.

Section 2.07 Loan of Proceeds. The Issuer agrees to issue the Series 2019 Bonds and to loan the proceeds thereof to the Company for the purpose of providing financing and refinancing to pay a portion of the Tax-Exempt Project Costs.

Section 2.08 No Default. The execution and delivery of this Financing Agreement, the Indenture and the Use of Proceeds Certificate by the Issuer do not, and consummation of the transactions contemplated hereby and thereby and the performance by the Issuer of its obligations thereunder will not result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Issuer is now a party or by which it is now bound.

Section 2.09 No Other Pledge. The Issuer has not and will not pledge the amounts derived from this Financing Agreement other than to secure the Series 2019 Bonds or any Additional Bonds.

Section 2.10 Volume Cap. The Issuer has a carryforward of Arkansas state volume cap from the 2018 calendar year, plus Arkansas state volume cap from the 2019 calendar year in an amount equal to or greater than the aggregate principal amount of the portion of the Series 2019 Bonds for which an allocation of Arkansas state volume cap is required pursuant to the Code.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

On the Closing Date, the Company and, with respect to Sections 3.01, 3.02, 3.04, 3.06, 3.14, and 3.18 only, Holdings represent and warrant to the Issuer that:

Section 3.01 Existence, Qualification and Power. Each of the Company and each Guarantor and their respective Subsidiaries has been (a) duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, and (b) duly qualified as a foreign corporation or limited liability company for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except, in the case of this clause (b), where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect. The Company, each Guarantor and their respective Subsidiaries have full legal right, power, and authority pursuant to its operating agreement or other governing document, as applicable, to (i) enter into the Bond Documents and any and all such other agreements and documents as may be required to be executed, delivered and received by the Borrower or any Guarantor in order to carry out, give effect to and consummate the transactions contemplated in such Bond Documents, in each case to which such Person is a party, and (ii) carry out and to consummate the transactions contemplated by the Bond Documents.

Section 3.02 Authorization; No Contravention.

(a) The Borrower and each Guarantor has duly authorized and approved by all necessary official action the execution and delivery of, and the performance by the Borrower or such Guarantor of the obligations on each of their part contained in the Indenture, the Bond Documents and the Guarantees, as applicable, and any and all such other agreements and documents to which either the Borrower or any Guarantor is a party or as may be required to be executed, delivered or received by the Borrower or any Guarantor in order to carry out, give effect to and consummate the transactions to be consummated by the Borrower or Guarantor, as applicable, and described therein.

(b) (i) None of the Borrower, any Guarantor nor any Subsidiary is in breach or violation of or in default under (A) any applicable organizational document of the Borrower, any Guarantor or any Subsidiary, (B) in any material respect, any statute, law or any judgment, order, decree, rule or regulation of any court or governmental agency or body having jurisdiction over any of the Borrower, any Guarantor or any of their respective Subsidiaries or any of their properties; or (C) in any material respect, any material obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other material agreement or instrument to which it is a party or by which it or any of its properties may be bound, including the the Fixed Asset Pari Passu Lien Collateral Documents, and (ii) the issuance and sale of the Bonds upon the terms set forth in the Indenture and the execution and delivery by the Borrower of the Bond Documents and by the Guarantor of the Guarantees, and compliance with the provisions of each thereof, will not conflict with or constitute a breach of or default under (A) any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument (including the Fixed Asset Pari Passu Lien Collateral Documents) to which any of the Borrower, any Guarantor or any of their respective Subsidiaries is a party or by which any of the Borrower, any Guarantor or any of their respective Subsidiaries is bound or to which any of the property or assets of any of them is subject, except, in the case of this clause for such conflicts, breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect, (B) any applicable organizational document of the Borrower, any Guarantor or any of their respective Subsidiaries, or (C) any law, statute, governmental regulation or any order, rule or regulation of any court or governmental agency or body having jurisdiction over any of the Borrower, any Guarantor any of their respective Subsidiaries or any of their properties, except in the case of clause (C) for such conflicts, breaches or defaults that would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.03 Governmental Authorization. All approvals, consents, and orders of any Governmental Authority, board, agency, or commission having jurisdiction that would constitute a condition precedent to the performance by the Borrower of its obligations under the Bond Documents, the issuance of the Bonds, and the execution and delivery and performance by the Borrower of the Bond Documents or the execution, delivery and performance by the Guarantors of the Guarantees, have been obtained, except for (a) filings or other actions necessary to maintain the perfection of the Liens on the Collateral granted by the Company, each Guarantor and their respective Subsidiaries in favor of the Pari Passu Lien Secured Parties, (b) those approvals, consents, exemptions, authorizations or other actions, notices or filings described in the Bond Documents, or (c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Except as would not reasonably be expected to result in a Material Adverse Effect, all approvals, consents, and orders of any Governmental Authority, board, agency, or commission having jurisdiction that are required to have been obtained for the construction and operation of the Project have been obtained or will be obtained prior to the Closing Date other than those that are not yet required to be obtained as of the Closing Date. The Borrower has no reason to believe that it will not be able to obtain any material approvals, consents, and orders of any Governmental Authority, board, agency, or commission having jurisdiction that are required to be obtained for the construction and operation of the Project that are not yet required to be obtained as of the Closing Date.

Section 3.04 Binding Effect. This Financing Agreement constitutes, and each of the Bond Documents and the Guarantees (when executed and delivered by the Borrower or any Guarantor, as applicable, and any other parties thereto) and the Fixed Asset Pari Passu Lien Collateral Documents constitute (or did constitute and continues to constitute, in the case of any Bond Document or Fixed Asset Pari Passu Lien Collateral Document executed prior to the date hereof), the legal, valid, and binding obligations of the Borrower or such Guarantor, as applicable, enforceable against the Borrower or such Guarantor, as applicable, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally from time to time in effect, and rights of acceleration, indemnity, and contribution, and the availability of equitable remedies may be limited by equitable principles.

Section 3.05 Financial Statements; No Material Adverse Effect. The financial statements included in the Limited Offering Memorandum, together with the related schedules and notes, present fairly in all material respects the financial position of the Borrower and the Guarantors and their respective Subsidiaries at the dates indicated and the statement of operations, stockholders' equity and cash flows of the Borrower, the Guarantors and their respective Subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in all material respects in accordance with GAAP the information required to be stated therein.

(b) None of the Borrower nor any Guarantor or any of their respective Subsidiaries has, since the date of the latest audited financial statements included in the Limited Offering Memorandum, (i) sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree or (ii) entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Borrower, any Guarantor and their respective Subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Borrower, the Guarantors and their respective Subsidiaries taken as a whole, in each case, otherwise than as set forth or contemplated in the Limited Offering Memorandum.

Section 3.06 Litigation. Except as otherwise disclosed in the Limited Offering Memorandum, there is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board, or body, pending or, to the knowledge of the Borrower, threatened against the Borrower, any Guarantor or any of their respective Subsidiaries, (i) affecting the existence of the Borrower or any Guarantor or any of their respective Subsidiaries or the titles of any of their officers to their respective offices, (ii) seeking to prohibit, restrain, or enjoin the issuance, sale, or delivery of the Bonds or the collection of the Trust Estate pledged or to be pledged to pay the principal of and interest on the Bonds, or the pledge thereof, (iii) in any way contesting or affecting the validity or enforceability of any Bond Document, the Guarantees or Fixed Asset Pari Passu Lien Collateral Document or any amendment or supplement thereto, (iv) contesting the power or authority of the Borrower to execute and deliver any of the Bond Documents or the authority of any of the Guarantors to execute and deliver any of the Guarantees, (v) wherein an unfavorable decision, ruling, or finding would materially adversely affect the validity or enforceability of any of the Bond Documents; or (vi) if determined adversely to the Borrower, the Guarantors or any of their respective Subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

Section 3.07 Ownership of Project; Liens. Each of the Borrower and each Guarantor and their respective Subsidiaries has (i) good and marketable title in fee simple to all real property owned by them, (ii) good and marketable title to all personal property owned by them and (iii) good and marketable leasehold or subleasehold interests in all real property and personal property leased by them pursuant to valid and enforceable leases, in each case, free and clear of all liens, encumbrances and defects, except such as are permitted under the Existing Debt Documents and the Fixed Asset Pari Passu Lien Collateral Documents, or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Borrower and the Guarantors in any material respects.

Section 3.08 Environmental Matters. Except as described in the Limited Offering Memorandum, (i) each of the Borrower, each Guarantor and their respective Subsidiaries is, and at all times prior hereto was, in compliance in all material respects with all laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any Governmental Authority, including, without limitation, any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety relating to hazardous materials, the environment, or natural resources, or to use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws") applicable to such entity, which compliance includes, without limitation, obtaining, maintaining and complying with all permits and authorizations and approvals required by Environmental Laws to conduct their respective businesses, and (ii) none of the Borrower, a Guarantor or any of their respective Subsidiaries has received written notice or otherwise has knowledge of any actual or alleged material violation of Environmental Laws, or of any actual or potential material liability for or other material obligation arising out of the presence, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants. Except as described in the Limited Offering Memorandum, (i) there are no proceedings that are pending against any of the Borrower, the Guarantors or their respective Subsidiaries under Environmental Laws in which a Governmental Authority is also a party, in which any of the Borrower, the Guarantors or their Subsidiaries reasonably believe that monetary fines or sanctions of $100,000 or more could be imposed, (ii) none of the Borrower, any Guarantor or their respective Subsidiaries are aware of any proposed or pending Environmental Laws which any of them reasonably believes will have a material and adverse impact on any of the Borrower, any Guarantors or their respective Subsidiaries within the next two (2) years, and (iii) none of the Borrower, any Guarantor or their respective Subsidiaries reasonably anticipates that any of them will incur material capital expenditures relating to compliance with, or liabilities or obligations under, applicable Environmental Laws within the next two (2) years, beyond those already budgeted to maintain compliance with such Environmental Laws.

Section 3.09 Taxes. Except as described in the Limited Offering Memorandum, each of the Borrower, each Guarantor and their respective Subsidiaries has filed all federal, state and foreign income tax returns and all other material tax returns required to be filed through the date hereof, subject to permitted extensions, and have paid all material taxes required to be paid by them to the extent due and payable, except for any such tax that is currently being contested in good faith (provided that appropriate reserves are made), and no material tax deficiency has been determined adversely to any of the Borrower, any Guarantor or any of their respective Subsidiaries, nor does any of the Borrower, any Guarantor or their respective Subsidiaries have any knowledge of any material tax deficiencies that have been asserted.

Section 3.10 Sales and Use Tax. By virtue of the Tax-Exempt Project being financed under the Act, the Company has not and will not assert that it is entitled to an exemption from Arkansas sales or use taxes on personal property acquired in connection with the Tax-Exempt Project. The foregoing sentence shall not operate to prevent the Company from seeking or obtaining an exemption or rebate on a basis other than the Tax-Exempt Project having been financed under the Act.

Section 3.11 Tax-Exempt. The proceeds received from the sale of the Series 2019 Bonds and loaned to the Borrower pursuant to the terms hereof shall be used in accordance with the Use of Proceeds Certificate and the Indenture, and the Borrower has not taken or permitted, or omitted to take, and will not take or permit, or omit to take, any action which will in any way (i) cause or result in the proceeds of the sale of the Series 2019 Bonds to be applied in a manner other than as provided in the Use of Proceeds Certificate and the Indenture, or (ii) adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2019 Bonds.

Section 3.12 ERISA. Except as described in the Limited Offering Memorandum, each (i) "employee benefit plan" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) which any of the Borrower, any Guarantor or any member of their "Controlled Group" (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "Code")) sponsors (each a "Plan") has been maintained in material compliance with its terms and with the requirements of all applicable statutes, rules and regulations including ERISA and the Code; (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any Plan excluding transactions eligible for a statutory or administrative exemption; (iii) with respect to each Plan subject to Title IV of ERISA (A) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or, to the knowledge of the Borrower, is reasonably expected to occur, (B) no failure to satisfy the "minimum funding standard" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred or, to the knowledge of the Borrower, is reasonably expected to occur, (C) the fair market value of the assets under each Plan subject to the funding requirements of Code Section 412 is at least 80% of the present value of all benefits accrued under such Plan (such that the Plan is not subject to funding-based limits under Code Section 436), and (D) each of the Borrower and each Guarantor has not incurred, and does not reasonably expect to incur, any liability (whether directly or as a member of its Controlled Group) under Title IV of ERISA (other than contributions to the Plan or premiums to the Pension Benefit Guaranty Corporation in the ordinary course and without default) in respect of a Plan (including with respect to a "multiemployer plan," within the meaning of Section 4001(c)(3) of ERISA); and (iv) each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

Section 3.13 Subsidiaries; Equity Interests. As of the Closing Date, the Company has one wholly owned Subsidiary, BRS Finance, and all of the outstanding Equity Interests in the Company have been validly issued and are fully paid and (if applicable) nonassessable, and (a) the Parent owns all outstanding Equity Interests in the Company, and (b) the Company owns all outstanding Equity Interests in BRS Finance, in each case free and clear of all Liens other than Permitted Liens.

Section 3.14 Investment Company Act. The Borrower is not required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

Section 3.15 Solvency. On the Closing Date, the Company is Solvent.

Section 3.16 Compliance with Laws; Anti-Corruption Laws and Sanctions.

(a) Compliance with Laws. Except as described in the Limited Offering Memorandum, the Company is in compliance with the requirements of all applicable Laws and all orders, writs, injunctions and decrees applicable to it, the Plant or the Project, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

(b) Anti-Corruption Laws and Sanctions. None of the Borrower, any Guarantor or any of their respective Subsidiaries nor any of their respective directors, members, managers or officers, or, to the knowledge of the Borrower, of each Guarantor and their respective Subsidiaries, any director, officer, member, manager, agent, employee, affiliate or other person associated with or acting on behalf of any of them has (i) made, offered, promised or authorized any unlawful contribution, gift, entertainment or other unlawful expense; (ii) made, offered, promised or authorized any direct or indirect unlawful payment; or (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption law (collectively, the "Anti-Corruption Law").

The operations of each of the Borrower, each Guarantor and any of their respective Subsidiaries are and have been conducted at all times in compliance with the requirements of applicable anti-money laundering laws, including, but not limited to, the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and the anti-money laundering laws of the various jurisdictions in which any such party or its Subsidiaries conduct business (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving any of the Borrower, a Guarantor or any of their respective Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of any such entity, threatened.

(ii) None of the Borrower, a Guarantor or any of their respective Subsidiaries nor, to the knowledge of the Borrower, any director, officer, member, manager, agent, employee or affiliate of each of the Borrower, each Guarantor or any of their respective Subsidiaries, is currently the subject or the target of any sanctions administered or enforced by the U.S. Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury, or the U.S. Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person," the European Union, Her Majesty's Treasury, the United Nations Security Council, or other relevant sanctions authority (collectively, "Sanctions"), and the Borrower will not directly or indirectly use the proceeds of the offering of the Bonds, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding, is the subject or the target of Sanctions or (ii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as issuer, underwriter, advisor, investor or otherwise) of Sanctions.

Section 3.17 Security. The Fixed Asset Pari Passu Lien Collateral Documents create legally valid and enforceable liens securing the BFA Loan Obligations ranking as contemplated in the Collateral Trust Agreement and Intercreditor Agreement, and no other security interest, lien or other encumbrance exists or will exist over the Borrower's or Guarantors' interest in the Collateral or over any other of the Borrower's or Guarantors' revenues or assets other than Permitted Liens, and on or promptly following the Closing Date, all necessary recordings and filings will have been or will be made such that the security interests created by such Fixed Asset Pari Passu Lien Collateral Documents constitute valid, perfected and continuing security interests on the Collateral under such Fixed Asset Pari Passu Lien Collateral Documents, subject only to Permitted Liens.

Except as otherwise contemplated hereby or under any other Bond Documents, the BFA Loan Obligations will be fully and unconditionally guaranteed (the "Guarantees") on a senior secured basis, jointly and severally, by Holdings, BRS Finance and each current and future domestic subsidiary that is an obligor or guarantor under the ABL Facility or the Term Loan Credit Agreement (each a "Guarantor" and collectively, the "Guarantors").

Section 3.18 Status as Pari Passu Lien Debt. The BFA Loan Obligations constitute, and shall continue to constitute, Pari Passu Lien Debt pursuant to the terms of the Collateral Trust Agreement and will be on a parity of security with other outstanding debt of the Company or the Guarantors and future debt of the Company or Guarantors, if any, designated as Pari Passu Lien Debt pursuant to the Pari Passu Lien Debt Documents.

Section 3.19 No Default. No Default or Event of Default has occurred and is continuing.

Section 3.20 Location. The Project is located wholly within the State of Arkansas.

Section 3.21 Insurance. Each of the Borrower, each Guarantor and their respective Subsidiaries carry, or are covered by, insurance from insurers of recognized financial responsibility in such amounts and covering such risks as is generally deemed adequate and customary for companies engaged in similar businesses in similar industries. All such policies of insurance are in full force and effect; the Borrower, each Guarantor and their respective Subsidiaries are in compliance with the terms of such policies in all material respects; and none of the Borrower, any Guarantor or their respective Subsidiaries has received notice from any insurer or agent of such insurer that capital improvements or other expenditures are required or necessary to be made in order to continue such insurance.

ARTICLE IV

ISSUANCE OF THE SERIES 2019 BONDS; USE OF PROCEEDS

Section 4.01 Deposits with the Trustee; Issuance of Series 2019 Bonds. To provide funds to the Company for purposes of financing and refinancing a portion of the Tax-Exempt Project Costs, the Issuer will issue, sell and deliver the Series 2019 Bonds upon the order of the Underwriter as provided in the Purchase Agreement. The Series 2019 Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature, will be subject to redemption and have such other terms as set forth therein. The Company hereby approves the terms and conditions of the Indenture and the Series 2019 Bonds, and the terms and conditions under which the Series 2019 Bonds will be issued, sold and delivered. The Company and the Issuer agree and, in accordance with Section 5.02 of the Indenture, the Company directs that the proceeds from the sale of the Series 2019 Bonds shall be deposited pursuant to Section 5.02 of the Indenture. The Company acknowledges that it has no ownership interest in the moneys held in the funds and accounts maintained by the Trustee, and specifically, with respect to the Construction Fund, the Company acknowledges and agrees that advances under the Series 2019 Note will be funded from deposits held by the Trustee in the applicable subaccounts only upon delivery of a written requisition satisfying the terms and conditions of the Indenture. The Company further acknowledges and agrees that the Issuer shall have no liability with respect to the investment, rebate, use, application or disbursement of the proceeds from the sale of the Series 2019 Bonds, and pursuant to Section 10.03 hereof, the Company holds the Issuer harmless from any such liability, cost or expense as may result therefrom.

At the request of the Company, and for the purposes and upon fulfillment of the conditions specified in the Indenture, the Issuer may provide for the issuance, sale and delivery of Additional Bonds, in accordance with the Bond Documents and in accordance with the requirements of the Act and other applicable law and make available the proceeds from the sale thereof to the Company.

Section 4.02 Rebate Fund. The Company agrees to make such payments to the Trustee (for deposit in the Rebate Fund as anticipated by Section 5. 11 of the Indenture) as are required of it under the Use of Proceeds Certificate. The obligation of the Company to make such payments shall remain in effect and be binding upon the Company notwithstanding the release and discharge of the Indenture and this Financing Agreement. The Company and the Issuer (to the extent within its control) each covenants to the owners of the Series 2019 Bonds that, notwithstanding any other provision of this Financing Agreement or any other instrument, it shall take no action, nor shall the Company direct the Trustee to take or approve the Trustee taking any action or direct the Trustee to make or approve the Trustee's making any investment or use of proceeds of the Series 2019 Bonds, or any other moneys which may arise out of or in connection with this Financing Agreement, the Indenture or the Tax-Exempt Project, which would cause the Series 2019 Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code. In addition, the Company covenants and agrees to comply with the requirements of Section 148(f) of the Code as it may be applicable to the Series 2019 Bonds or the proceeds derived from the sale of the Series 2019 Bonds or any other moneys which may arise out of, or in connection with, this Financing Agreement, the Indenture or the Tax-Exempt Project throughout the term of the Series 2019 Bonds. No provision of this Financing Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations. For purposes of complying with their respective obligations under this Section 4.02 and the Use of Proceeds Certificate, the Issuer and the Company may rely upon the advice of Bond Counsel retained by the Issuer or the Company.

Section 4.03 Use of Series 2019 Bond Proceeds. (a) The Issuer covenants and agrees, upon the terms and conditions in this Financing Agreement and the Series 2019 Note, to use the proceeds of the Series 2019 Bonds (conditioned on the receipt thereof by the Issuer) to make the BFA Loan to the Company for the financing and reimbursement of a portion of the Tax-Exempt Project Costs. The Company agrees to use such proceeds of the Series 2019 Bonds solely for such purposes.

(b) In the event the amounts available to the Company from the BFA Loan should not be sufficient to pay the costs of the Tax-Exempt Project in full, the Company agrees to complete the Tax-Exempt Project and to pay that portion of the Tax-Exempt Project Costs in excess of the moneys available from the BFA Loan. The Issuer does not make any warranty, either expressed or implied, that the proceeds of the BFA Loan will be sufficient to pay all of the Tax-Exempt Project Costs.

Section 4.04 Repayment of Loan.

(a) Whether or not the Company has fully drawn the proceeds of the BFA Loan, at least one (1) Business Day before each date provided in or pursuant to the Indenture for the payment (whether at maturity or upon redemption, tender or acceleration) of principal of, and premium, if any, and interest on, and the purchase price of, the Series 2019 Bonds, until the principal of, and premium, if any, and interest on, and the purchase price of, the Series 2019 Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Company shall pay to the Trustee in immediately available funds, for deposit in the Debt Service Fund, and without regard to the principal amount of the BFA Loan, a sum equal to the amount payable on such date (whether at maturity or upon redemption or acceleration) as principal of, and premium, if any, and interest on, the Series 2019 Bonds as provided in the Indenture; *provided*, *however*, that the obligation of the Company to make any such payments shall be reduced by the amount of any moneys then on deposit in the Debt Service Fund and available for such payment. The obligation of the Company to make the payments pursuant to this Financing Agreement shall be absolute and unconditional without defense or set-off by reason of any default by the Issuer under this Financing Agreement or under any other agreement between the Company and the Issuer or for any other reason, including, but not limited to, the unpaid balance of the BFA Loan, it being the intention of the parties that the payments required hereunder will be paid in full when due without any delay or diminution whatsoever and without regard to the principal amount of the BFA Loan.

(b) The Company also agrees to pay (i) the annual fee of the Trustee and the Collateral Agent, for their ordinary services rendered as trustee or collateral agent, respectively, and their ordinary expenses, as and when the same become due, (ii) the fees, charges and expenses (including reasonable legal fees and expenses) of the Trustee previously agreed upon in writing, in each of its respective capacities (including as Registrar, Paying Agent and Authenticating Agent (as each such term is defined in the Indenture)), the reasonable, customary and documented fees of any other paying agent on the Series 2019 Bonds as provided in the Indenture, as and when the same become due, (iii) the fees, charges and expenses of the Trustee for any extraordinary services rendered by it and any extraordinary expenses (including, but not limited to reasonable attorneys' fees and expenses) incurred by it under the Indenture, as and when the same become due, (iv) the cost of printing any Series 2019 Bonds required to be furnished by the Issuer, (v) the cost of printing and typesetting any preliminary offering memorandum, offering memorandum or other offering circular utilized in connection with the sale of any Series 2019 Bonds and any amendment or supplement thereto, (vi) the Issuer's fee at the Closing Date, and (vii) any amounts required to be deposited in the Rebate Fund to comply with the provisions hereof, the Indenture and the Use of Proceeds Certificate, and the payment of any rebate analyst. The Trustee's compensation shall not be limited by any provision of law regarding the compensation of a trustee of an express trust.

(c) The Company also agrees to pay, (i) as soon as practicable after receipt of request for payment thereof, all expenses required to be paid by the Company under the terms of the Purchase Agreement, and (ii) all reasonable, customary and documented expenses of the Issuer, including reasonable legal fees and expenses, related to the Project, and the execution, delivery and performance of this Financing Agreement, the Indenture, and all other agreements and instruments executed in connection with the issuance of the Series 2019 Bonds, which are not otherwise required to be paid by the Company under the terms of this Financing Agreement, including all costs of issuance.

(d) The Company may prepay all or any part of the amounts required to be paid by it under this Financing Agreement or the Series 2019 Note as further provided in Article IX hereof.

Section 4.05 Assignment of Issuer's Rights. As security in part for the payment of the Series 2019 Bonds, the Issuer will assign to the Trustee the Issuer's rights under this Financing Agreement (except the Unassigned Issuer's Rights) and under the Series 2019 Note, and the Issuer hereby directs the Company to make or cause the payments required hereunder to be made (except such payments for expenses and indemnification included in the Unassigned Issuer's Rights) directly to the Trustee. The Company hereby assents to such assignment and agrees to make payments directly to the Trustee without defense or set-off by reason of any dispute between the Company and the Issuer or the Trustee. "Unassigned Issuer's Rights" means the Issuer's right to cause the Company to pay for or otherwise reimburse costs and expenses of the Issuer, to enforce certain below-listed obligations of the Company (but not to the exclusion of such enforcement by the Trustee), including, without limitation, all of the Issuer's right to indemnification from the Company under this Financing Agreement, as set forth in Sections 4.01, 4.02, 4.04(b), 4.04(c), 5.06, 5.13, 8.05, 8.10, 8.11, 8.12, 10.01, 10.03, 12.04, 12.06, 12.08, 12.10, 12.12, 12.13 and 12.14 hereof.

Section 4.06 Amounts Remaining in Funds. It is agreed by the parties hereto that after payment in full of (i) the Series 2019 Bonds, or after provision for such payment shall have been made as provided in the Indenture, (ii) the fees, charges and expenses of the Trustee and paying agents in accordance with the Indenture, and (iii) all other amounts required to be paid under this Financing Agreement and the Indenture, any amounts remaining in any fund held by the Trustee under the Indenture (except the Rebate Fund) shall be paid as provided in Section 5.09 of the Indenture.

ARTICLE V

AFFIRMATIVE COVENANTS

The Company hereby agrees that it shall, and, as applicable, shall cause each Restricted Subsidiary to:

Section 5.01 Company Reporting and Information Covenants. So long as any Series 2019 Bonds are Outstanding, the Company will furnish to the Holders the information required by and otherwise comply with the Continuing Disclosure Undertaking Agreement.

Section 5.02 Certificates; Other Information.

(a) Deliver to the Trustee, within one hundred twenty (120) days after the end of each fiscal year ending after the Closing Date, a certificate from the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Company and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Financing Agreement, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every condition and covenant contained in this Financing Agreement during such fiscal year and is not in Default in the performance or observance of any of the terms, provisions, covenants and conditions of this Financing Agreement (or, if a Default shall have occurred, describing all such Defaults of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto).

(b) When any Default has occurred and is continuing under this Financing Agreement, shall promptly (which shall be no more than thirty (30) days after becoming aware of such Default) deliver to the Trustee by registered or certified mail or by facsimile transmission an Officer's Certificate specifying such Default, its status and what actions the Company proposes to take with respect thereto.

Section 5.03 Company Existence. Subject to Sections 6.12 and 6.13, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its organizational existence, and the corporate, partnership or other organizational existence of each of its Restricted Subsidiaries, in accordance with the respective Organizational Documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary; provided that the Company shall not be required to preserve the corporate, partnership or other organizational existence of its Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

Section 5.04 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Company or any of the Restricted Subsidiaries excepted.

Section 5.05 Insurance. Maintain with insurance companies that the Company believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Company's and the Restricted Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Company and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Trustee, upon reasonable written request, information presented in reasonable detail as to the insurance so carried*; provided* that notwithstanding the foregoing, in no event will the Company or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. The Company shall use commercially reasonable efforts to ensure that each such policy of insurance (other than business interruption insurance (if any), director and officer insurance and worker's compensation insurance) shall as appropriate and to the extent customary in the applicable jurisdiction governing such policy of insurance for substantially similar financings, (i) name the Collateral Agent, on behalf of the Pari Passu Lien Secured Parties, as an additional insured thereunder as its interests may appear and/or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Pari Passu Lien Secured Parties, as the loss payee thereunder (in the case of property insurance with respect to the Collateral).

Section 5.06 Compliance with Laws. Comply in all material respects with the requirements of all Laws and comply, as applicable, with the USA PATRIOT Act, sanctions administered by OFAC and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except, in each case, in instances in which (i) such requirement of Law, order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

Section 5.07 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Company or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

Section 5.08 Inspection Rights. Permit representatives of the Trustee and each Bond Holder to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom (other than the records of the Board of Directors of the Company, any Guarantor or any of their respective Subsidiaries), and to discuss its affairs, finances and accounts with its directors, officers, and independent accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Company and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Company; *provided* that, only the Trustee on behalf of the Bond Holders may exercise rights of the Trustee and the Bond Holders under this Section 5.08 and the Trustee shall not exercise such rights more often than one (1) time during any calendar year absent the existence of an Event of Default and such one (1) time shall be at the Company's expense; *provided*, *further*, that when an Event of Default exists, the Trustee (or any of its respective representatives or independent contractors) on behalf of the Bond Holders may do any of the foregoing at the expense of the Company at any time during normal business hours and upon reasonable advance notice. The Trustee and the Bond Holders shall give the Company the opportunity to participate in any discussions with the Company's independent public accountants. Notwithstanding anything to the contrary in this Section 5.08, none of the Company or any of the Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure to the Trustee or any Bond Holder (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (c) is subject to attorney-client or similar privilege or constitutes attorney work product; *provided* that, to the extent legally permissible, the Company shall notify the Trustee in writing that any such document, information or other matter is being withheld pursuant to clauses (a), (b) or (c) of this Section 5.08 and shall use commercially reasonable efforts to communicate, to the extent permitted, the applicable information in a way that would not violate such restrictions and to eliminate such restrictions.

Section 5.09 Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits.

Section 5.10 Further Assurances. Subject to the provisions and limitations of Section 6.11 and any applicable limitations in any Fixed Asset Pari Passu Lien Collateral Document and in each case at the expense of the Company, promptly as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Fixed Asset Pari Passu Lien Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Trustee or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Fixed Asset Pari Passu Lien Collateral Documents.

Section 5.11 Maintenance of Ratings. Use commercially reasonable efforts to maintain ratings on the Series 2019 Bonds by the Rating Agencies so long as the Series 2019 Bonds are Outstanding under the Indenture and the Rating Agencies continue to rate securities issued by or on behalf of an entity similar to the Company.

Section 5.12 Taxes. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.13 Tax Covenants. Not take any action or inaction, nor fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2019 Bonds under the Code. Without limiting the generality of the foregoing, the Company will comply with the instructions and requirements of the Use of Proceeds Certificate, which is incorporated herein as if set forth fully herein. The Company will, on a timely basis, provide the Trustee with written evidence of the Company's computation of the Company's rebate requirement or yield reduction payments and, with respect to the Company's rebate requirement or yield reduction payments (both as may be required under the Use of Proceeds Certificate) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Company to comply with all arbitrage and rebate requirements of the Code. For purposes of complying with its obligations under this Section 5.13 and the Use of Proceeds Certificate, the Company may rely upon the advice of Bond counsel retained by the Company. Notwithstanding any other provision of this Financing Agreement or Article IX of the Indenture to the contrary, the covenants contained in this Section 5.13 shall survive the defeasance or payment in full of any and all Series 2019 Bonds.

Section 5.14 Certificate of Completion. In order to facilitate complying with §148 of the Code, within thirty (30) days of completion of the Tax-Exempt Project, provide the Trustee with a certificate stating that construction of the Tax-Exempt Project has been completed and all costs and expenses incurred in connection therewith have been paid or provided for and a certificate of occupancy for the Tax-Exempt Project has been issued by appropriate local governmental authorities, if applicable. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties that exist at the date of such certificate or that may subsequently come into being.

ARTICLE VI

NEGATIVE COVENANTS

Section 6.01 Limitation on Restricted Payments.

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

(I) declare or pay any dividend or make any payment or distribution on account of the Company's or any Restricted Subsidiary's Equity Interests to any Person other than the Company or any Restricted Subsidiary of the Company (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(A) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Company or a Parent Company or in options, warrants or other rights to purchase such Equity Interests; or

(B) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the Company or a Restricted Subsidiary receives at least its *pro rata* share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(II) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Company or any Parent Company, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Company or a Restricted Subsidiary;

(III) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Subordinated Indebtedness, other than:

(A) Indebtedness permitted under Sections 6.03(b)(8), (9) and (10); or

(B) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or

(IV) make any Restricted Investment;

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

(1) no Default or Event of Default will have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to any such Restricted Payment made utilizing clause (3)(A) below on a *pro forma* basis, the Company could incur $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments (including the fair market value of any non-cash amount) made by the Company and its Restricted Subsidiaries after the Closing Date (excluding Restricted Payments permitted by Section 6.01(b), other than Sections 6.01(b)(1), (8) and (14), is less than the sum of (without duplication):

(A) 50.00% of the Consolidated Net Income of the Company for the period (taken as one accounting period) beginning on the first fiscal quarter commencing after the Closing Date to the end of the most recently ended fiscal quarter for which internal financial statements are available (as determined in good faith by the Company) preceding such Restricted Payment, or, in the case such Consolidated Net Income for such period is a deficit, *minus* 100.00% of such deficit; *plus*

(B) 100.00% of the aggregate net cash proceeds and the fair market value of marketable securities or other property received by the Company and its Restricted Subsidiaries since the Closing Date from the issue or sale of:

(i) (A) Equity Interests of the Company, including Treasury Capital Stock, but excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of:

(x) Equity Interests to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, its Subsidiaries or any Parent Company after the Closing Date to the extent the amount of such cash proceeds have been applied to Restricted Payments made in accordance with Section 6.01(b)(4); and

(y) Designated Preferred Stock; and

(B) Equity Interests of Parent Companies, to the extent the proceeds of any such issuance or consideration for any such sale are contributed to the Company (excluding contributions of the proceeds from the sale of Designated Preferred Stock of such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with Section 6.01(b)(4)); or

(ii) Indebtedness of the Company or any Restricted Subsidiary, that has been converted into or exchanged for Equity Interests of the Company or any Parent Company;

provided that this clause (3)(B) will not include the proceeds from (V) Refunding Capital Stock (as defined below) applied in accordance with Section 6.01(b)(2), (W) Equity Interests or convertible debt securities of the Company sold to a Restricted Subsidiary, (X) Disqualified Stock or debt securities or Indebtedness that have been converted into Disqualified Stock, (Y) Excluded Contributions or (Z) Capex Equity; *plus*

(C) 100.00% of the aggregate amount of cash, Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Company (other than in the form of Disqualified Stock) following the Closing Date (including the fair market value of any Indebtedness contributed to the Company or its Restricted Subsidiaries for cancellation) or that becomes part of the capital of the Company through consolidation, amalgamation or merger following the Closing Date, in each case not involving cash consideration payable by the Company (other than (X) cash, Cash Equivalents and marketable securities or other property that are contributed by a Restricted Subsidiary, (Y) Excluded Contributions or (Z) Capex Equity); *plus*

(D) 100.00% of the aggregate amount received in cash and the fair market value of marketable securities or other property received by the Company or a Restricted Subsidiary by means of:

(i) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of, or other returns on Investments from, Restricted Investments made by the Company or its Restricted Subsidiaries (including cash distributions and cash interest received in respect of Restricted Investments) and repurchases and redemptions of such Restricted Investments from the Company or its Restricted Subsidiaries (other than by the Company or a Restricted Subsidiary) and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Company or its Restricted Subsidiaries, in each case after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof); or

(ii) the sale (other than to the Company or a Restricted Subsidiary) of Equity Interests of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but including such cash or fair market value to the extent exceeding the amount of such Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) or (3) of the definition thereof); or

(iii) any cash returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a dollar-denominated or ratio-based basket (to the extent in excess of the original amount of such Investment and not included in Consolidated Net Income); *plus*

(E) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Company or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Company or a Restricted Subsidiary after the Closing Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of cash or fair market value; *plus*

(F) 100.00% of the aggregate amount of Declined Excess Proceeds; *plus*

(G) the greater of (i) $10.0 million and (ii) 7.5% of the Consolidated EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis).

(b) Section 6.01(a) will not prohibit:

(1) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within sixty (60) days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Financing Agreement;

(2) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Company or any Restricted Subsidiary or any Parent Company, including any accrued and unpaid dividends thereon ("Treasury Capital Stock"), or (ii) Subordinated Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Company or any Parent Company (in the case of proceeds, to the extent any such proceeds therefrom are contributed to the Company) (in each case, other than Disqualified Stock) ("Refunding Capital Stock") and (y) within one hundred twenty (120) days of such sale or issuance, (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Company or to an employee stock ownership plan or any trust established by the Company or any Restricted Subsidiary) of Refunding Capital Stock made within one hundred twenty (120) days of such sale or issuance, and (c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Company was permitted under Section 6.01(b)(6)(A) or (B), the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any Parent Company) in an aggregate amount per annum no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(3) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of (a) Subordinated Indebtedness of the Company or BRS Finance or a Subsidiary Guarantor made (i) by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Subordinated Indebtedness of the Company or BRS Finance or a Subsidiary Guarantor or Disqualified Stock of the Company or BRS Finance or a Subsidiary Guarantor and (ii) within one hundred twenty (120) days of such sale, issuance or incurrence, (b) Disqualified Stock of the Company or BRS Finance or a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of, Disqualified Stock or Subordinated Indebtedness of the Company or BRS Finance or a Subsidiary Guarantor, made within one hundred twenty (120) days of such sale, issuance or incurrence, (c) Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor made within one hundred twenty (120) days of such sale or issuance that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 6.03 and (d) any Subordinated Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness;

(4) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Company or any Parent Company held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Company or any Parent Company in connection with any such repurchase, retirement or other acquisition); *provided* that the aggregate amount of Restricted Payments made under this clause (4) does not exceed $20.0 million in any calendar year (increasing to $40.0 million following an underwritten public Equity Offering by the Company or any Parent Company) with unused amounts in any calendar year being carried over to succeeding calendar years; *provided*, *further*, that such amount in any calendar year under this clause (4) may be increased by an amount not to exceed:

(A) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Company and, to the extent contributed to the Company, the cash proceeds from the sale of Equity Interests of any Parent Company, in each case to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company, or pursuant to any Management Services Agreements, that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of Section 6.01(a)(3); *plus*

(B) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Restricted Subsidiaries or pursuant to any Management Services Agreements that are foregone in exchange for the receipt of Equity Interests of the Company pursuant to any compensation arrangement, including any deferred compensation plan; *plus*

(C) the cash proceeds of life insurance policies received by the Company or its Restricted Subsidiaries (or by any Parent Company to the extent contributed to the Company (other than in the form of Disqualified Stock)) after the Closing Date; *minus*

(D) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (A), (B) and (C) of this clause (4);

and *provided* that the Company may elect to apply all or any portion of the aggregate increase contemplated by Sections 6.01(b)(4)(A), (B) and (C) in any calendar year and *provided*, *further*, that cancellation of Indebtedness owing to the Company or any of its Restricted Subsidiaries from any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), of the Company, any Parent Company or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Company or any Parent Company will not be deemed to constitute a Restricted Payment for purposes of this Section 6.01 or any other provision of this Financing Agreement;

(5) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Company or any Restricted Subsidiary or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 6.03 to the extent such dividends or distributions are included in the definition of "Fixed Charges";

(6) (A) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Company or any Restricted Subsidiary after the Closing Date;

(B) the declaration and payment of dividends or distributions to any Parent Company, the proceeds of which will be used to fund the payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by such Parent Company after the Closing Date; *provided* that the amount of dividends and distributions paid pursuant to this clause (B) will not exceed the aggregate amount of cash actually contributed to the Company from the sale of such Designated Preferred Stock; or

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to Section 6.01(b)(2);

provided that in the case of each of clauses (A), (B) and (C) of this clause (6), for the most recently ended Test Period preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Company would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00;

(7) (a) payments made or expected to be made by the Company or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Company or any Restricted Subsidiary or any Parent Company, (b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and (c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Company or any Parent Company or any Restricted Subsidiary of the Company in connection with such Person's purchase of Equity Interests of the Company or any Parent Company; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(8) the declaration and payment of dividends on the Company's common equity (or the payment of dividends to any Parent Company to fund a payment of dividends on a Parent Company's common equity), following the first public offering of the Company's common equity or the common equity of any Parent Company after the Closing Date, in an amount not to exceed the sum of (a) 6.00% per annum of the net cash proceeds received by or contributed to the Company in or from any such public offering, other than public offerings with respect to the Company's or such Parent Company's common equity registered on Form S-4 or Form S-8 and other than any public sale constituting an Excluded Contribution, or Capex Equity and (b) an aggregate amount per annum not to exceed 6.00% of Market Capitalization;

(9) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(10) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is made) the greater of (a) $15.0 million and (b) 10.0% of the Consolidated EBITDA of the Company and its Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis);

(11) distributions or payments of Securitization Fees;

(12) the repurchase, redemption, defeasance, acquisition or retirement for value of any Subordinated Indebtedness pursuant to the provisions similar to those of Sections 6.04 or 6.08; *provided* that (i) at or prior to such repurchase, redemption, defeasance, acquisition or retirement, the Company and/or BRS Finance (or a third person permitted by this Financing Agreement) have made any required Change of Control Offer or Asset Sale Offer, as applicable, to purchase the Bonds on the terms provided in this Financing Agreement applicable to Change of Control Offers or Asset Sale Offers, respectively, and (ii) all Bonds validly tendered and not validly withdrawn by Holders in any such Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed, acquired or retired for value;

(13) the declaration and payment of dividends or distributions by the Company or a Restricted Subsidiary to, or the making of loans or advances to, the Company or any Parent Company in amounts required for any Parent Company to pay, in each case without duplication:

(a) franchise, excise and similar taxes, and other fees and expenses required to maintain their corporate or other legal existence;

(b) (i) for any taxable period (or portion thereof) for which the Company or any of its Restricted Subsidiaries are members of a consolidated, combined, unitary or similar income tax group for U.S. federal or applicable foreign, state or local income tax purposes of which a Parent Company is the common parent (a "Tax Group"), the portion of any U.S. federal, foreign, state or local income taxes (as applicable) of such Tax Group for such taxable period that are attributable to the taxable income of the Company and/or the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries); *provided* that for each taxable period, (x) the amount of such payments made in respect of such taxable period in the aggregate will not exceed the amount that the Company and the applicable Restricted Subsidiaries (and, to the extent permitted below, the applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of such taxable income as stand-alone taxpayers or a stand-alone Tax Group and (y) the amount of such payments made in respect of an Unrestricted Subsidiary will be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Company or any Restricted Subsidiary for such purpose; or

(ii) for any taxable period (or portion thereof) for which the Company and any Parent Company is a partnership or disregarded entity for U.S. federal income tax purposes, cash distributions ("Tax Distributions") to each direct or indirect member of the Parent Company in accordance with the terms of its relevant operating agreement, in an aggregate amount not to exceed the product of (A) the taxable income of the Company allocable to such member for such period reduced by any taxable loss of the Company allocated to such member with respect to any prior taxable periods (or portions thereof) ending after the Closing Date (provided that any such taxable loss will be taken into account only to the extent that (I) such taxable loss was not previously taken into account in determining the amount of any Tax Distributions pursuant to this clause (b)(ii), (II) such taxable loss would be deductible if such loss had been incurred in the current taxable period, and (III) such taxable loss would actually reduce the tax liability of such member for such taxable period, taking into account any alternative minimum tax consequences as well as the character of the taxable loss and of the Company's and its Subsidiaries' income, and assuming for the purposes of this subclause (III) that such member, for all tax years (or portions thereof) ending after the Closing Date, has been a taxable corporation that has held no assets other than such member's direct or indirect interest in the Company or Parent Company), in each case, determined by taking into account any basis step-up in the assets of the Company or any of its Subsidiaries (including any step-up attributable to such member under section 743 of the Code), and (B) the maximum combined effective tax rate applicable to any direct or indirect equity owner of the Company or Parent Company for such taxable period (taking into account the character of the taxable income in question (*e.g.* long-term capital gain, qualified dividend income, etc.) and the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitations thereon)); *provided* that the amount of any Tax Distribution permitted under this clause (b)(ii) shall be reduced by the amount of any income taxes that are paid directly by the Company and attributable to such member;

(c) salary, bonus, severance and other benefits payable to, and indemnities provided on behalf of, employees, directors, officers, members of management, consultants and independent contractors of any Parent Company and any payroll, social security or similar taxes thereof;

(d) general corporate or other operating, administrative, compliance and overhead costs and expenses (including expenses relating to auditing and other accounting matters) of any Parent Company;

(e) fees and expenses (including ongoing compliance costs and listing expenses) related to any equity or debt offering of a Parent Company (whether or not consummated);

(f) amounts that would be permitted to be paid directly by the Company or its Restricted Subsidiaries under Section 6.05 (other than clause (b)(2)(a) thereof); and

(g) to finance Investments or other acquisitions or investments otherwise permitted to be made pursuant to this Section 6.01 if made by the Company; *provided* that (A) such Restricted Payment must be made within one hundred twenty (120) days of the closing of such Investment, acquisition or investment, (B) such Parent Company must, promptly following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Company or one of its Restricted Subsidiaries or (2) the merger, amalgamation, consolidation, or sale of the Person formed or acquired into the Company or one of its Restricted Subsidiaries (to the extent not prohibited by Section 6.13) in order to consummate such Investment, acquisition or investment, (C) such Parent Company and its Affiliates (other than the Company or a Restricted Subsidiary) receives no consideration or other payment in connection with such transaction except to the extent the Company or a Restricted Subsidiary could have given such consideration or made such payment in compliance with this Financing Agreement, (D) any property received by the Company may not increase amounts available for Restricted Payments pursuant to Section 6.01(a)(3) and (E) to the extent constituting an Investment, such Investment will be deemed to be made by the Company or such Restricted Subsidiary pursuant to another provision of this Section 6.01 (other than pursuant to Section 6.01(b)(9)) or pursuant to the definition of "Permitted Investments" (other than clause (9) thereof);

(14) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Company or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents);

(15) cash payments or loans, advances, dividends or distributions to any Parent Company to make payments, in lieu of issuing fractional shares in connection with share dividends, share splits, reverse share splits, mergers, consolidations, amalgamations or other business combinations and in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Company, any of its Restricted Subsidiaries or any Parent Company;

(16) other Restricted Payments, *provided* that after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than 3.00 to 1.00;

(17) payments made for the benefit of the Company or any of its Restricted Subsidiaries to the extent such payments could have been made by the Company or any of its Restricted Subsidiaries because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 6.05;

(18) payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Financing Agreement or any other transaction that complies with the terms of this Financing Agreement;

(19) the payment of dividends, other distributions and other amounts by the Company to, or the making of loans to, any Parent Company in the amount required for such parent to, if applicable, pay amounts equal to amounts required for any Parent Company, if applicable, to pay interest and/or principal (including AHYDO "catch-up payments") on Indebtedness, the proceeds of which have been permanently contributed to the Company or any Restricted Subsidiary and that has been guaranteed by, or is otherwise considered Indebtedness of, the Company or any Restricted Subsidiary incurred in accordance with this Financing Agreement; *provided* that the aggregate amount of such dividends, distributions, loans and other amounts shall not exceed the amount of cash actually contributed to the Company for the incurrence of such Indebtedness;

(20) the making of cash payments in connection with any conversion of Convertible Indebtedness of the Company, BRS Finance or any Restricted Subsidiary in an aggregate amount since the Closing Date not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) any payments received by the Company, BRS Finance or any Restricted Subsidiary pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(21) any payments in connection with (a) a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Company's common equity upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common equity upon any early termination thereof; and

(22) the refinancing of any Subordinated Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness;

provided that at the time of, and after giving effect to, any Restricted Payment permitted under Section 6.01(b)(6), (10) and (16), in respect of Restricted Payments described in clauses (I), (II) or (III) of Section 6.01(a), no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of Sections 6.01(b)(7) and (13), taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 6.01, in the event that any Restricted Payment or Investment (or a portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in Section 6.01(a) or 6.01(b), but excluding 6.01(b)(22), and/or one or more of the clauses contained in the definition of "Permitted Investments", the Company will, in its sole discretion, be entitled to divide or classify (or later divide, classify or reclassify), in whole or in part, such Restricted Payment or Investment (or any portion thereof) among Section 6.01(a) and/or 6.01(b), but excluding 6.01(b)(22), and/or one or more clauses contained in the definition of "Permitted Investments," in a manner that otherwise complies with this Section 6.01. The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Company's election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Company or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

(d) As of the Closing Date, all of the Company's Subsidiaries will be Restricted Subsidiaries. The Company will not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the penultimate sentence of the definition of "Unrestricted Subsidiary." For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Company and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be Restricted Payments or Permitted Investments in an amount determined as set forth in the definition of "Investments." Such designation will be permitted only if a Restricted Payment in such amount would be permitted at such time pursuant to this Section 6.01 or if an Investment would be permitted at such time, pursuant to the definition of "Permitted Investments," and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. Unrestricted Subsidiaries will not be subject to any of the restrictive covenants set forth in this Financing Agreement. For the avoidance of doubt, this Section 6.01 will not restrict the making of any "AHYDO catch up payment" with respect to, and required by the terms of, any Indebtedness of the Company or any Restricted Subsidiary permitted to be incurred under the terms of this Financing Agreement.

Section 6.02 Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

(a) The Company will not, and will not permit any Restricted Subsidiary that is not a Subsidiary Guarantor to, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(1) (A) pay dividends or make any other distributions to the Company or BRS Finance or any Restricted Subsidiary that is a Subsidiary Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or

(B) pay any Indebtedness owed to the Company or BRS Finance or to any Restricted Subsidiary that is a Subsidiary Guarantor;

(2) make loans or advances to the Company or BRS Finance or to any Restricted Subsidiary that is a Subsidiary Guarantor; or

(3) sell, lease or transfer any of its properties or assets to the Company or BRS Finance or to any Restricted Subsidiary that is a Subsidiary Guarantor;

provided that dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.

(b) The restrictions in Section 6.02(a) will not apply to encumbrances or restrictions existing under or by reason of:

(1) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Term Loan Credit Agreement, the ABL Facility and the related documentation and Hedging Obligations and the related documentation;

(2) this Financing Agreement, the Series 2019 Note, the Indenture, the Bonds, the Notes Indenture, the Bonds, the Guarantees thereof and the Security Documents;

(3) Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in Section 6.02(a)(3) on the property so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with or into the Company or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Company or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries or the property or assets so acquired or designated;

(6) contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Company pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(7) Secured Indebtedness otherwise permitted to be incurred pursuant to Sections 6.03 and 6.06 that limit the right of the debtor to dispose of assets or incur Liens;

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Permitted Liens;

(9) provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Subsidiary Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 6.03;

(10) provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business;

(11) customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to intellectual property and other agreements;

(12) restrictions created in connection with any Qualified Securitization Facility or Receivables Financing Transaction that, in the good faith determination of the Company, are necessary or advisable to effect such Qualified Securitization Facility or Receivables Financing Transaction;

(13) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Company or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; provided that such agreement prohibits the encumbrance of solely the property or assets of the Company or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Company or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;

(14) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Company or any Restricted Subsidiary;

(15) customary provisions restricting assignment of any agreement;

(16) restrictions arising in connection with cash or other deposits permitted under Section 6.06;

(17) any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 6.03 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to the Company or any Restricted Subsidiary than (A) the restrictions contained in this Financing Agreement, the Notes Indenture, the Term Loan Credit Agreement or the ABL Facility as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to the Company or that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Holders than is customary in comparable financings for similarly situated entities or (iii) will not materially impair the Company's ability to make payments due and owing pursuant to this Financing Agreement when due, in each case in the good faith judgment of the Company;

(18) (i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 6.03(b)(5) and any permitted refinancing in respect thereof, and (ii) agreements entered into in connection with a Sale and Lease-Back Transaction entered into in the ordinary course of business or consistent with industry practice or a Specified Sale and Lease-Back Transaction;

(19) customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.02;

(20) any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; provided that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Company or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;

(21) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (20) of this Section 6.02(b); provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(22) any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; provided that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Company, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(23) applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 6.03 is incurred or issued; and

(24) restrictions on the sale, lease or transfer of property or assets arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company and the Restricted Subsidiaries, taken as a whole.

Section 6.03 Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, create, incur, issue, assume, guarantee or otherwise become directly or indirectly, liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and the Company will not issue any shares of Disqualified Stock and will not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock; *provided* that the Company may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, if the Fixed Charge Coverage Ratio of the Company for the Company's most recently ended Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) would have been at least 2.00 to 1.00, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period.

(b) Section 6.03(a) will not apply to:

(1) the incurrence of Indebtedness pursuant to Credit Facilities by the Company or any Restricted Subsidiary and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) in an aggregate principal amount not to exceed the greater of (a) the ABL Cap Amount (as such amount may be modified pursuant to and in compliance with subparagraph (5) of the definition of ABL Obligations) and (b) the sum of (i) 75% of the book value (calculated in accordance with GAAP) of the inventory of the Company and any Restricted Subsidiaries (excluding LIFO reserves) and (ii) 90% of the book value of accounts receivable of the Company and any Restricted Subsidiaries (in each case, calculated on a pro forma basis by the book value set forth on the consolidated balance sheet of the Company for the for the most recently ended Test Period); *provided* that any Indebtedness incurred under this Section 6.03(b)(1) may be extended, replaced, refunded, refinanced, renewed or defeased (including through successive extensions, replacements, refundings, refinancings, renewals and defeasances) with new Indebtedness so long as the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the sum of (x) the principal amount (or accreted value, if applicable) of the Indebtedness being so extended, replaced, refunded, refinanced, renewed or defeased (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced to the extent permanently terminated at the time of incurrence of such new Indebtedness), *plus* (y) any accrued and unpaid interest on the Indebtedness being refinanced, *plus* (z) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the incurrence of such new Indebtedness or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness;

(2) Other Pari Passu Lien Obligations incurred by the Company, BRS Finance or any Restricted Subsidiary, which when aggregated with all other Pari Passu Lien Obligations incurred in reliance on this clause (2), together with any Refinancing Indebtedness in respect thereof (excluding Incremental Amounts) do not exceed the Other Pari Passu Lien Obligations Debt Limit after giving pro forma effect to such incurrence and the application of the net proceeds therefrom;

(3) (a) the incurrence by the Company or BRS Finance and any Subsidiary Guarantor of Indebtedness represented by the obligations under this Financing Agreement and the Series 2019 Note and related Guarantees (but excluding any obligations under this Financing Agreement related to the issuance of Additional Bonds and related guarantees issued after the Closing Date) and (b) the incurrence by the Company or BRS Finance and any Subsidiary Guarantor of Indebtedness represented by the Senior Secured Notes and related Guarantees (but excluding any additional notes issued under the Notes Indenture and related guarantees issued after the Closing Date);

(4) the incurrence of Indebtedness by the Company and any Restricted Subsidiary in existence on the Closing Date (excluding Indebtedness described in Sections 6.03(b)(1), (2) and (3));

(5) (a) the incurrence of Attributable Indebtedness and (b) Indebtedness (including Purchase Money Obligations) and Disqualified Stock incurred or issued by the Company or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock and/or Preferred Stock incurred or issued and outstanding under this clause (5) at such time, not to exceed (as of the date such Indebtedness, Disqualified Stock and/or Preferred Stock is issued, incurred or otherwise obtained) the greater of (x) $100.0 million and (y) 60% of Consolidated EBITDA of the Company and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);

(6) Indebtedness incurred by the Company or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(7) the incurrence of Indebtedness arising from agreements of the Company or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets, property or a Person that becomes a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets, property or a Person that becomes a Subsidiary for the purpose of financing such acquisition;

(8) the incurrence of Indebtedness or the issuance of Disqualified Stock by the Company and owing to a Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to any Restricted Subsidiary); *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Subsidiary Guarantor or BRS Finance is expressly subordinated in right of payment to the Bonds to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Company or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent the Disqualified Stock is then outstanding) not permitted by this clause (8);

(9) the incurrence of Indebtedness by a Restricted Subsidiary and owing to the Company or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Company or any Restricted Subsidiary) to the extent such Indebtedness constitutes a Permitted Investment; *provided* that any such Indebtedness for borrowed money incurred by a Subsidiary Guarantor or BRS Finance and owing to a Restricted Subsidiary that is not a Subsidiary Guarantor or BRS Finance is expressly subordinated in right of payment to the BFA Loan Obligations of such Subsidiary Guarantor or the BFA Loan Obligations of BRS Finance to the extent permitted by applicable law and it does not result in material adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Company or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (9);

(10) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Company or another Restricted Subsidiary (or to any Parent Company which is substantially contemporaneously transferred to the Company or any Restricted Subsidiary); *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Company or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (10);

(11) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);

(12) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal, surety and similar bonds and performance, banker's acceptance facilities and completion guarantees and similar obligations (including guarantees thereof) provided by the Company or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(13) the incurrence of Indebtedness or issuance of Disqualified Stock of the Company and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (13), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (x) $100.0 million and (y) 60% of Consolidated EBITDA of the Company and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance); plus, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased *plus* (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock;

(14) the incurrence or issuance by the Company of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to refund, refinance, extend, replace, renew or defease (collectively, "refinance" with "refinances," "refinanced," and "refinancing" having a correlative meaning) any Indebtedness (including any Designated Revolving Commitments) incurred or Disqualified Stock or Preferred Stock issued as permitted under Sections 6.03(a) and Sections 6.03(b)(2), (3), (4), (5), (13), this Section 6.03(b)(14) and Section 6.03(b)(15) or any successive Refinancing Indebtedness with respect to any of the foregoing;

(15) the incurrence or issuance of:

(a) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary incurred or issued to finance an acquisition or investment (or other purchase of assets) or that is assumed by the Company or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets) including any Acquired Indebtedness; and (b) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Company or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Company or a Restricted Subsidiary in accordance with the terms of this Financing Agreement, including any Acquired Indebtedness; *provided* that in the case of the preceding clauses (a) and (b) either:

(A) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Company would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; or

(B) after giving *pro forma* effect to such acquisition, amalgamation, consolidation or merger, the Fixed Charge Coverage Ratio of the Company for the Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this clause (B)) would be no less than the Fixed Charge Coverage Ratio immediately prior to giving effect to such incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, in each case, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;

(16) the incurrence of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with industry practice;

(17) the incurrence of Indebtedness of the Company or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to any Credit Facility, in a principal amount not in excess of the stated amount of such letter of credit or bank guarantee;

(18) (a) the incurrence of any guarantee by the Company or a Restricted Subsidiary of Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligation incurred by the Company or such Restricted Subsidiary is permitted under the terms of this Financing Agreement, or (b) any co-issuance by the Company or any Restricted Subsidiary of any Indebtedness or other obligations of the Company or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Company or such Restricted Subsidiary was permitted under the terms of this Financing Agreement;

(19) the incurrence of Indebtedness issued by the Company or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Company or any Parent Company to the extent described in Section 6.01(b)(4);

(20) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;

(21) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Company, any Subsidiaries or any joint venture and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;

(22) Indebtedness incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm's length commercial terms;

(23) the incurrence of Indebtedness of the Company or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;

(24) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Company that are not Subsidiary Guarantors or BRS Finance in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (24), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (a) $100.0 million and (b) 60% of Consolidated EBITDA of the Company for the most recently ended Test Period (calculated on a *pro forma* basis after giving effect to such incurrence or issuance);

(25) the incurrence of Indebtedness by the Company or any Restricted Subsidiary to the extent that the net proceeds thereof are promptly deposited with the Trustee to satisfy and discharge the Bonds in accordance with this Financing Agreement;

(26) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees, and distribution partners and guarantees required by PUCs or other Governmental Authorities in the ordinary course of business;

(27) the incurrence of Indebtedness representing deferred compensation to employees of any Parent Company, the Company or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Financing Agreement;

(28) repayment obligations with respect to grants from Governmental Authorities;

(29) Qualified Securitization Facilities and, to the extent constituting Indebtedness, Receivables Financing Transactions; and

(30) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (29) of this Section 6.03(b).

(c) For purposes of determining compliance with this Section 6.03:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (30) of Section 6.03(b) or is entitled to be incurred pursuant to Section 6.03(a), the Company, in its sole discretion, may divide and classify and may subsequently re-divide and reclassify such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or a portion thereof) in such of the above clauses or under Section 6.03(a) as determined by the Company at such time; *provided* that all Indebtedness outstanding under the (a) ABL Facility on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 6.03(b)(1) and may not be reclassified and (b) Term Loan Credit Agreement on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 6.03(b)(2) and may not be reclassified and the Notes Indenture on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 6.03(b)(3);

(2) the Company is entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 6.03(a) and Section 6.03(b), subject to the proviso to Section 6.03(c)(1);

(3) the principal amount of Indebtedness outstanding under any clause of this Section 6.03 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued pursuant to Section 6.03(b) (other than Sections 6.03(b)(1) or (15)) on the same date that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued under Section 6.03(a) or Sections 6.03(b)(1) or (15), then the Fixed Charge Coverage Ratio, or applicable leverage ratio, will be calculated with respect to such incurrence or issuance under Section 6.03(a) or Sections 6.03(b)(1) or (15) without regard to any incurrence or issuance under Section 6.03(b) (other than with respect to any incurrence or issuance under Section 6.03(b)(1) or (15)). Unless the Company elects otherwise, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock will be deemed incurred or issued first under Section 6.03(a) or Sections 6.03(b)(1) or (15) to the extent permitted, with the balance incurred or issued under Section 6.03(b) (other than pursuant to Sections 6.03(b)(1) or (15)); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 6.03.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount, and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will, in each case, not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock or Preferred Stock for purposes of this Section 6.03. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to Sections 6.03(b)(1), (2), (3), (4), (5), (13), (14) and (15) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased and (II) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the U.S. dollar-equivalent principal amount of Indebtedness, liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower U.S. dollar equivalent)); *provided* that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (1) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased *plus* (2) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (3) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Company dated such date prepared in accordance with GAAP.

The Company will not, and will not permit any Subsidiary Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is contractually subordinated in right of payment to any Indebtedness of the Company or such Subsidiary Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Bonds or such Subsidiary Guarantor's Guarantee to the extent and in the same manner as such Indebtedness is contractually subordinated to other Indebtedness of the Company or such Subsidiary Guarantor, as the case may be.

For purposes of this Financing Agreement, (1) unsecured Indebtedness will not be deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured, (2) Indebtedness will not be deemed to be subordinated or junior to any other Indebtedness merely because it is issued or guaranteed by other obligors and (3) Secured Indebtedness will not be deemed to be subordinated or junior to any other Secured Indebtedness merely because it has a junior priority lien with respect to the same collateral.

If any Indebtedness is incurred, or Disqualified Stock or Preferred Stock is issued, in reliance on a basket measured by reference to a percentage of Consolidated EBITDA, and any refinancing thereof would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such newly incurred Indebtedness, the liquidation preference of such newly issued Disqualified Stock or the amount of such newly issued Preferred Stock does not exceed the sum of (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and, with respect to Indebtedness under Designated Revolving Commitments, will be permitted to include an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such new Indebtedness).

Section 6.04 Asset Sales.

(a) The Company will not, and will not permit any Restricted Subsidiary to, consummate an Asset Sale, unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(2) except in the case of a Permitted Asset Swap, at least 75.00% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Company or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; provided that each of the following will be deemed to be cash or Cash Equivalents for purposes of this Section 6.04(a)(2):

(A) any liabilities (as shown on the Company's or any Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Company's or a Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Company) of the Company or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Bonds or any Subsidiary Guarantor's Guarantee of the Bonds, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Company or a Restricted Subsidiary);

(B) any securities, bonds or other obligations or assets received by the Company or a Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Company or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(C) any Designated Non-Cash Consideration received by the Company or a Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (C) that is at that time outstanding, not to exceed the greater of (x) $80.0 million and (y) 50% of Consolidated EBITDA of the Company for the most recently ended Test Period (calculated on a pro forma basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Company's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to subsequent changes in value;

(D) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Company or a Restricted Subsidiary), to the extent that the Company and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale; and

(E) any Investment, Capital Stock, assets, property or capital or other expenditure of the kind referred to in Section 6.04(b)(2).

(b) Within 365 days after the receipt of any Net Proceeds of any Asset Sale (as may be extended pursuant to clause (2) below, the "Asset Sale Proceeds Application Period"), the Company or a Restricted Subsidiary, at its option, may apply an amount equal to the Net Proceeds from such Asset Sale:

(1) to:

(A) if the assets subject to such Asset Sale constitute ABL Priority Collateral, prepay, repay, redeem, reduce or purchase ABL Obligations (and to correspondingly reduce commitments with respect thereto);

(B) if the assets subject to such Asset Sale constitute Fixed Asset Priority Collateral, prepay, repay, redeem, reduce or purchase Fixed Asset Pari Passu Lien Obligations on a pro rata basis; provided that the Company will reduce Obligations under the Series 2019 Bonds on a pro rata basis by, at its option, (i) redeeming Series 2019 Bonds as described in Section 4.01 of the Indenture, (ii) purchasing Series 2019 Bonds through open-market purchases, at a price equal to (or higher than) 100.00% of the principal amount thereof, or (iii) making an offer (in accordance with the procedures set forth in Section 6.04(d) below for an Asset Sale Offer) to all Holders to purchase their Series 2019 Bonds on a pro rata basis with such other Indebtedness for no less than 100.00% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the principal amount of Series 2019 Bonds to be repurchased to the date of repurchase as described in Section 4.01(d) of the Indenture;

(C) subject to clause (D) below, if the assets subject to such Asset Sale do not constitute Collateral, prepay, repay, redeem, reduce or purchase Obligations under other Indebtedness of the Company or a Subsidiary Guarantor (and, if the Indebtedness prepaid, repaid, redeemed, reduced or purchased is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto);

provided that the Company shall equally and ratably prepay, repay, redeem, reduce or purchase (or offer to prepay, repay, redeem, reduce or purchase, as applicable) Fixed Asset Pari Passu Lien Obligations (and may elect to reduce other ABL Obligations) on a pro rata basis; *provided further*, the Company will reduce Obligations under the Series 2019 Bonds on a pro rata basis by, at its option, (i) redeeming Series 2019 Bonds as described under Section 4.01 of the Indenture, (ii) purchasing Series 2019 Bonds through open-market purchases, at a price equal to (or higher than) 100.00% of the principal amount thereof, or (iii) making an offer (in accordance with the procedures set forth in Section 6.04(d) below for an Asset Sale Offer) to all Holders to purchase their Series 2019 Bonds on a pro rata basis with such other Indebtedness for no less than 100.00% of the principal amount thereof, plus the amount of accrued but unpaid interest, if any, on the principal amount of Series 2019 Bonds to be repurchased to the date of repurchase; or

(D) If the assets subject to such Asset Sale do not constitute Collateral prepay, repay, redeem, reduce or purchase Obligations in respect of Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor, other than Obligations owed to the Company or a Restricted Subsidiary;

provided that in the case of clauses (B) and (C) above, (i) if an offer to purchase any Indebtedness of the Company or any Restricted Subsidiary is made, such amount will be deemed repaid to the extent of the amount of such offer, whether or not accepted by the Holders of such Indebtedness, for purposes of compliance with this Section 6.04 and no Net Proceeds in the amount of such offer will be deemed to exist following such offer, and (ii) if the Holder of any Indebtedness of the Company or any Restricted Subsidiary declines the repayment of such Indebtedness owed to it from such Net Proceeds, such amount will be deemed repaid to the extent of the declined Net Proceeds for the purposes of compliance with this Section 6.04 (but such Indebtedness will remain Outstanding);

(2) to make (a) an Investment in any one or more businesses; provided that such Investment in any business is in the form of the acquisition of Capital Stock and results in the Company or any Restricted Subsidiary owning an amount of the Capital Stock of such business such that it constitutes or continues to constitute a Restricted Subsidiary, provided, further that, in the case of an Asset Sale of Collateral, the assets (including Capital Stock) constitute and are pledged as Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral) as provided under the Security Documents, (b) capital expenditures, provided, that, in the case of an Asset Sale of Collateral, such capital expenditures are made with respect to properties or assets that constitute and are pledged as Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral), (c) other expenditures made in connection with the construction or development of facilities operated or to be operated by the Company or a Restricted Subsidiary, provided, that, in the event of an Asset Sale of Collateral, such facilities constitute Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral), (d) acquisitions of properties (including fee and leasehold interests) provided, that, in the event of an Asset Sale of Collateral, such properties constitute and are pledged as Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral) or (e) acquisitions of other assets, other than securities, in the case of clauses (a) and, (d) above and this clause (e), either (i) that are or will be used or useful in a Similar Business or (ii) that replace, in whole or in part, the properties or assets that are the subject of such Asset Sale provided, that, in the event of an Asset Sale of Collateral, such other assets constitute Collateral (and in the case of an Asset Sale of Fixed Asset Priority Collateral, constitute and are pledged as Fixed Asset Priority Collateral); provided further that in the case of this clause (2), a binding commitment will be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Company or a Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment (or, if later, 365 days after the receipt of such Net Proceeds) (an "Acceptable Commitment") and, in the event that any Acceptable Commitment is later cancelled or terminated for any reason before the Net Proceeds are applied in connection therewith, then such Net Proceeds will constitute Excess Proceeds (as defined below); or

(3) any combination of the foregoing.

(c) Notwithstanding the foregoing, (i) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary (a "Foreign Disposition") are prohibited or delayed by applicable local law from being repatriated to the United States, the amount equal to the portion of such Net Proceeds so affected will not be required to be applied in compliance with this covenant, and such amounts may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Company hereby agreeing to use reasonable efforts to cause the applicable Foreign Subsidiary to take all actions reasonably required by the applicable local law to permit such repatriation), and if such repatriation of any of such affected Net Proceeds is permitted under the applicable local law, an amount equal to such Net Proceeds permitted to be repatriated will be applied (whether or not repatriation actually occurs) in compliance with this covenant (net of any additional taxes that are or would be payable or reserved against as a result thereof) and (ii) to the extent that the Company has determined in good faith that repatriation of any or all of the Net Proceeds of any Foreign Disposition could have a material adverse tax consequence (which for the avoidance of doubt, includes, but is not limited to, any purchase whereby doing so the Company, any Restricted Subsidiary or any of their Affiliates and/or equity partners would incur a material tax liability, including a material deemed dividend pursuant to Code Section 956 or material withholding tax), the amount equal to the Net Proceeds so affected will not be required to be applied in compliance with this covenant.

(d) The amount equal to the Net Proceeds from Asset Sales, that are not invested or applied as provided and within the time period set forth in Section 6.04(b) (it being understood that any portion of such Net Proceeds used to make an offer to purchase Series 2019 Bonds pursuant to Section 6.04(b)(1)(B) and (C) will be deemed to have been so applied whether or not such offer is accepted) will be deemed to constitute "Excess Proceeds". When the aggregate amount of Excess Proceeds exceeds $ 50.0 million, the Company will make an offer (an "Asset Sale Offer") to all Holders and, at the option of the Company, to any holders of any Pari Passu Indebtedness to purchase the maximum aggregate principal amount of the Series 2019 Bonds and such Pari Passu Indebtedness that is in an amount equal to at least $100,000 or an integral multiple of $5,000 in excess thereof, that may be purchased out of the Excess Proceeds at an offer price, in the case of the Series 2019 Bonds, in cash in an amount equal to 100.00% of the principal amount thereof (or accreted value thereof, if less), plus accrued and unpaid interest, if any (or, in respect of such Pari Passu Indebtedness, such other price, if any, as may be provided for by the terms of such Pari Passu Indebtedness), to, but excluding, the date fixed for the closing of such offer, in accordance with the procedures set forth in Section 4.06 of the Indenture (or, in respect of such Pari Passu Indebtedness, the agreement or instrument governing the terms thereof). The Company will commence an Asset Sale Offer with respect to Excess Proceeds within thirty (30) days after the date that the amount of Excess Proceeds exceeds $50.0 million by mailing or electronically delivering the notice required pursuant to Section 4.06 of the Indenture, with a copy to the Trustee, or otherwise in accordance with Applicable Procedures. The Company may satisfy the foregoing obligation with respect to any Net Proceeds from an Asset Sale by making an offer to purchase Series 2019 Bonds with respect to the amount of all or part of the available Net Proceeds (the "Advance Portion") prior to the expiration of the Asset Sale Proceeds Application Period with respect to the amount of all or a part of the available Net Proceeds in advance of being required to do so by this Financing Agreement (the "Advance Offer").

To the extent that the aggregate principal amount (or accreted value, as applicable) of Series 2019 Bonds and Pari Passu Indebtedness tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds (or in the case of an Advance Offer, the Advance Portion), the Company and its Restricted Subsidiaries may use any remaining Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) in any manner not prohibited by this Financing Agreement (any such remaining Excess Proceeds and Advance Portion amount, "Declined Excess Proceeds"). If the aggregate principal amount of Series 2019 Bonds and/or the Pari Passu Indebtedness surrendered in an Asset Sale Offer exceeds the amount of Excess Proceeds (or in the case of an Advance Offer, the Advance Portion), the Company will cause the Trustee to select the Series 2019 Bonds to be purchased in the manner described in Section 4.06 of the Indenture and the Company will select such Pari Passu Indebtedness to be purchased pursuant to the terms of such Pari Passu Indebtedness; provided that as between the Series 2019 Bonds and any Pari Passu Indebtedness, such purchases will be made on a pro rata basis based on the principal amount of the Series 2019 Bonds or such Pari Passu Indebtedness tendered with adjustments as necessary so that no Series 2019 Bonds or Pari Passu Indebtedness will be repurchased in part in an unauthorized denomination. Upon completion of any such Asset Sale Offer, for purposes of this provision the amount of Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) that resulted in the Asset Sale Offer or Advance Offer will be reset to zero (regardless of whether there are any remaining Excess Proceeds (or Advance Portion) upon such completion). An Asset Sale Offer or Advance Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Financing Agreement, the Series 2019 Bonds, the Indenture, and/or Guarantees (but the Asset Sale Offer or Advance Offer may not condition tenders on the delivery of such consents).

(e) Pending the final application of the amount of any Net Proceeds pursuant to this Section 6.04, such amount of Net Proceeds may be applied to temporarily reduce Indebtedness outstanding under a revolving credit facility, including under the ABL Facility, or otherwise invested in any manner not prohibited by this Financing Agreement.

(f) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of the Bonds pursuant to an Asset Sale Offer or Advance Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Financing Agreement, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations described in this Financing Agreement by virtue thereof.

(g) The Company's obligation to make an offer to repurchase the Series 2019 Bonds pursuant to this Section 6.04 may be waived or modified with the written consent of the Holders of a majority in principal amount of the then Outstanding Series 2019 Bonds.

Section 6.05 Transactions with Affiliates.

(a) The Company will not, and will not permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each of the foregoing, an "Affiliate Transaction") involving aggregate payments or consideration in excess of $50.0 million, unless:

(1) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Company or the relevant Restricted Subsidiaries than those that would have been obtained at such time in a comparable transaction by the Company or such Restricted Subsidiary with a Person other than an Affiliate of the Company on an arm's-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Company or such Restricted Subsidiary from a financial point of view; and

(2) the Company delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of $100.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with Section 6.05(a)(1).

(b) Section 6.05(a) will not apply to the following:

(1) (a) transactions between or among the Company and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Company and any Parent Company; provided that such merger, consolidation or amalgamation of the Company is otherwise in compliance with the terms of this Financing Agreement and effected for a bona fide business purpose;

(2) (a) Restricted Payments permitted by Section 6.01 hereof (including any transaction specifically excluded from the definition of the term "Restricted Payments," including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition), (b) any "Permitted Investments" or any acquisition otherwise permitted by this Financing Agreement and (c) Indebtedness permitted by Section 6.03;

(3) (a) the payment of management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses pursuant to the Management Services Agreements (including any unpaid management, consulting, monitoring, transaction, bonus, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees pursuant to the Management Services Agreements and (b) the payment of indemnification and similar amounts to, and reimbursement of expenses of, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors;

(4) any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any present, future or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company that are, in each case, approved by the Company in good faith; and the provision of reasonable and customary compensation and other benefits (including the payment of any fees and compensation, benefit plan or arrangement, any health, disability or similar insurance plan), indemnities and reimbursements of expenses and employment and severance arrangements to, or on behalf of, or for the benefit of such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries or any Parent Company;

(5) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Company, any of its Subsidiaries or any Parent Company, or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice;

(6) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with a Person that is not an Affiliate of the Company on an arm's-length basis;

(7) the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Closing Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole as compared to the applicable agreement as in effect on the Closing Date);

(8) the existence of, or the performance by the Company or any Restricted Subsidiary of its obligations under the terms of, any equity holder agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto and similar agreements or arrangements that it may enter into thereafter; provided that the existence of, or the performance by the Company or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Closing Date will only be permitted by this clause (8) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole (as compared to the original agreement or arrangement in effect on the Closing Date);

(9) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(10) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Financing Agreement that are fair to the Company and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Company, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(11) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Company or any Parent Company to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Company;

(12) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility and any other transaction effected in connection with a Qualified Securitization Facility or a financing related thereto;

(13) payments by the Company or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;

(14) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and repurchase and cancellation of any thereof) of the Company, any Parent Company and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Company, any of its Subsidiaries or any Parent Company pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Company in good faith;

(15) (a) investments by Affiliates in securities or Indebtedness of the Company or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Company or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Company or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Company and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;

(16) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(17) payments by the Company (and any Parent Company) and its Subsidiaries pursuant to tax sharing agreements among the Company (and any Parent Company) and its Subsidiaries; provided that in each case the amount of such payments by the Company and its Subsidiaries are permitted under Section 6.01(b)(13);

(18) any lease or sublease entered into between the Company or any Restricted Subsidiary, as lessee or sublessee, and any Affiliate of the Company, as lessor or sublessor, and transactions pursuant to that lease which lease or sublease is approved by the Board of Directors or senior management of the Company in good faith;

(19) (i) intellectual property licenses in the ordinary course of business or consistent with industry practice and (ii) intercompany intellectual property licenses and research and development agreements;

(20) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Company or any Parent Company pursuant to any equity holders agreement or registration rights agreement entered into on or after the Closing Date;

(21) transactions permitted by, and complying with Section 6.13 solely for the purpose of (a) reorganizing to facilitate any initial public offering of securities of the Company or any Parent Company, (b) forming a holding company or (c) reincorporating the Company or BRS Finance in a new jurisdiction;

(22) transactions undertaken in good faith (as determined by the Board of Directors or senior management of the Company) for the purposes of improving the consolidated tax efficiency of the Company and its Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth in this Financing Agreement;

(23) (a) transactions with a Person that is an Affiliate of the Company (other than an Unrestricted Subsidiary) solely because the Company or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Company, any Restricted Subsidiary or any Parent Company;

(24) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Company or a Parent Company;

(25) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Company;

(26) investments by any Investor or Parent Company in securities or Indebtedness of the Company or any Subsidiary Guarantor;

(27) payments on the Series 2019 Bonds in accordance with this Financing Agreement and payments of Obligations under the Credit Facilities and payments in respect of Obligations under other Indebtedness, Disqualified Stock or Preferred Stock of the Company and its Subsidiaries held by Affiliates; provided that such Obligations were acquired by an Affiliate of the Company in compliance with this Financing Agreement;

(28) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium; and

(29) any transaction on arm's length terms with a non-Affiliate that becomes an Affiliate as a result of such Transaction.

Section 6.06 Liens.

(a) The Parent will not and the Company will not, and will not permit any Subsidiary Guarantor to, create, incur or assume any Lien (except Permitted Liens) that secures Indebtedness on any Collateral or any income or profits therefrom, or assign or convey any right to receive income therefrom.

(b) Subject to the foregoing, the Company will not, and will not permit any Restricted Subsidiary to, create, incur or assume any Lien (except Permitted Liens) that secures Obligations under any Indebtedness or any related guarantee of Indebtedness, on any asset or property of the Company or any Restricted Subsidiary that is not Collateral, or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:

(1) in the case of Liens securing Subordinated Indebtedness, the BFA Loan Obligations and related Guarantees are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens until such time as such Subordinated Indebtedness is no longer secured by such Liens; and

(2) in all other cases, the BFA Loan Obligations or the Guarantees are equally and ratably secured until such time as such Obligations are no longer secured by such Liens.

For purposes of determining compliance with this Section 6.06, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in the definition thereof but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, the Company will, in its sole discretion, be entitled to divide, classify or reclassify, in whole or in part, any such Lien (or any portion thereof) among one or more of such categories or clauses in any manner.

Any Lien created for the benefit of the Holders pursuant to Section 6.06(b) will be deemed automatically and unconditionally released and discharged upon the release and discharge of each of the Liens described in clauses (1) and (2) of Section 6.06(b) or upon such Liens no longer attaching to assets or property of the Company or a Restricted Subsidiary so secured.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this covenant.

Section 6.07 Company Existence. Subject to Section 6.13 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its organizational existence, and the corporate, partnership or other organizational existence of each of its Restricted Subsidiaries, in accordance with the respective Organizational Documents (as the same may be amended from time to time) of the Company or any such Restricted Subsidiary; provided that the Company shall not be required to preserve the corporate, partnership or other organizational existence of its Restricted Subsidiaries, if the Company in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

Section 6.08 Offer to Repurchase Upon Change of Control.

(a) If a Change of Control occurs, unless the Company have previously or concurrently electronically delivered or mailed a redemption notice with respect to all the outstanding Bonds as described under Section 4.01 of the Indenture, the Company will make an offer to purchase all of the Series 2019 Bonds pursuant to the offer described below (the "Change of Control Offer") at a price in cash (the "Change of Control Payment") equal to 101.00% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase, subject to the right of Holders of record on the relevant Record Date to receive interest due on any Interest Payment Date prior to such repurchase. Within sixty (60) days following any Change of Control, the Company will send notice of such Change of Control Offer electronically or by first-class mail, postage prepaid, with a copy to the Trustee, to each Holder at such Holder's registered address, or otherwise in accordance with Applicable Procedures, with the following information:

(1) a Change of Control Offer is being made pursuant to this Section 6.08 and all Series 2019 Bonds properly tendered pursuant to such Change of Control Offer will be accepted for payment by the Company;

(2) the purchase price and the purchase date, which will be no earlier than twenty (20) Business Days nor later than sixty (60) days from the date such notice is mailed or otherwise delivered (the "Change of Control Payment Date"), subject to extension (in the case where such notice is mailed or otherwise delivered prior to the occurrence of the Change of Control) in the event that the occurrence of the Change of Control is delayed;

(3) any Series 2019 Bond not properly tendered will remain outstanding and continue to accrue interest;

(4) unless the Company defaults in the payment of the Change of Control Payment, all Series 2019 Bonds accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;

(5) Holders electing to have any Series 2019 Bonds purchased pursuant to a Change of Control Offer will be required to surrender such Series 2019 Bonds, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Series 2019 Bonds completed to the Paying Agent at the address specified in the notice or otherwise in accordance with Applicable Procedures, prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) Holders will be entitled to withdraw their tendered Series 2019 Bonds and their election to require the Company to purchase such Series 2019 Bonds; provided that the Paying Agent receives, not later than the close of business on the second Business Day prior to the expiration date of the Change of Control Offer, a facsimile transmission or letter or other notice in accordance with Applicable Procedures setting forth the name of the Holder, the principal amount of Series 2019 Bonds tendered for purchase, and a statement that such Holder is withdrawing its tendered Series 2019 Bonds and its election to have such Bonds purchased;

(7) Holders whose Series 2019 Bonds are being purchased only in part will be issued new Series 2019 Bonds and such new Series 2019 Bonds will be equal in principal amount to the unpurchased portion of the Series 2019 Bonds surrendered; provided that the unpurchased portion of the Series 2019 Bonds must be equal to at least $100,000 or any integral multiple of $5,000 in excess of $100,000;

(8) if such notice is delivered prior to the occurrence of a Change of Control, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control and describing each such condition, and, if applicable, stating that, in the Company's discretion, the Change of Control Payment Date may be delayed until such time (including more than sixty (60) days after the date the notice was mailed or delivered, including by electronic transmission) as any or all such conditions are satisfied (or waived by the Company in its sole discretion), or such purchase may not occur and such notice may be rescinded in the event that any or all such conditions are not satisfied (or waived by the Company in its sole discretion) by the Change of Control Payment Date, or by the Change of Control Payment Date as so delayed, or such notice may be rescinded at any time in the Company's discretion if in the good faith judgment of the Company any or all of such conditions will not be satisfied. In addition, the Company may provide in such notice that payment of the purchase price and performance of the Company's obligations with respect to such purchase may be performed by another Person; and

(9) the other instructions, as determined by the Company, consistent with this Section 6.08, that a Holder must follow in order to have its Bonds repurchased.

(b) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws or regulations are applicable in connection with the repurchase of Series 2019 Bonds by the Company pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Financing Agreement, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached their obligations described in this Financing Agreement by virtue thereof.

(c) On the Change of Control Payment Date, the Company will, to the extent permitted by law:

(1) accept for payment, or cause the Trustee to accept for payment, all Series 2019 Bonds or portions thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Series 2019 Bonds or portions thereof validly tendered and not validly withdrawn; and

(3) deliver, or cause to be delivered, to the Trustee (a) an Officer's Certificate to the Trustee stating that such Series 2019 Bonds or portions thereof have been tendered to and purchased by the Company and (b) at the Company's, the Series 2019 Bonds so accepted for cancellation.

(d) The Company will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Financing Agreement applicable to a Change of Control Offer made by the Company and purchases all Series 2019 Bonds validly tendered and not validly withdrawn under such Change of Control Offer.

(e) A Change of Control Offer may be made in advance of a Change of Control and conditional upon such Change of Control if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Other than as specifically provided in this Section 6.08, any purchase pursuant to this Section 6.08 shall be made pursuant to applicable sections of Article IV of the Indenture, and references therein to "redeem," "redemption," "Redemption Date" and similar words shall be deemed to refer to "purchase," "repurchase," "Change of Control Payment Date" and similar words, as applicable.

(g) A Change of Control Offer may be made at the same time as consents are solicited with respect to an amendment, supplement or waiver of this Financing Agreement, the Indenture, the Series 2019 Bonds and/or Guarantees (but the Change of Control Offer may not condition tenders on the delivery of such consents).

(h) The Company's obligation to make an offer to repurchase the Series 2019 Bonds pursuant to this Section 6.08 may be waived or modified (at any time, including after a Change of Control) with the written consent of the Holders of a majority in principal amount of the Series 2019 Bonds then outstanding.

Section 6.09 Limitation on Guarantees of Indebtedness by Restricted Subsidiaries.

The Company will not permit any of its Wholly-Owned Subsidiaries that are Restricted Subsidiaries (and non-Wholly-Owned Subsidiaries if such non-Wholly-Owned Subsidiary guarantees Indebtedness under the Term Loan Credit Agreement, the ABL Facility, the Notes Indenture or Capital Markets Indebtedness of the Company or any Subsidiary Guarantor), other than a Subsidiary Guarantor or an Excluded Subsidiary, to guarantee the payment of (i) any Indebtedness of the Company or BRS Finance or any Subsidiary Guarantor under the Credit Facilities incurred under Section 6.03(b)(1), (ii) the Term Loan Credit Agreement, (iii) the Notes Indenture, (iv) the BFA Loan Obligations, or (v) Capital Markets Indebtedness of the Company or any Subsidiary Guarantor, in each case, having an aggregate principal amount outstanding in excess of $50.0 million unless:

(1) such Restricted Subsidiary within 30 days executes and delivers to the Trustee a supplemental indenture to this Financing Agreement, the form of which is attached as Exhibit C hereto, providing for a Guarantee by such Restricted Subsidiary, except that with respect to a guarantee of Indebtedness of the Company or any Subsidiary Guarantor if such Indebtedness is by its express terms subordinated in right of payment to the BFA Loan Obligations or such Subsidiary Guarantor's Guarantee, any such guarantee by such Restricted Subsidiary with respect to such Indebtedness will be subordinated in right of payment to such Guarantee substantially to the same extent as such Indebtedness is subordinated to the BFA Loan Obligations; and

(2) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other applicable rights against the Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Guarantee;

provided that this Section 6.09 will not be applicable to any guarantee of any Restricted Subsidiary that existed at the time such Person became a Restricted Subsidiary and was not incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary. The Company may elect, in its sole discretion, to cause any Subsidiary that is not otherwise required to be a Subsidiary Guarantor to become a Subsidiary Guarantor, in which case such Subsidiary will not be required to comply with clause (1) or (2) of this Section 6.09 and such Guarantee may be released at any time in the Company's sole discretion.

Section 6.10 Suspension of Covenants.

(a) During any period of time that (i) the Series 2019 Bonds have an Investment Grade Rating and (ii) no Default has occurred and is continuing under this Financing Agreement (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event" and the date thereof being referred to as the "Suspension Date"), the Company and the Restricted Subsidiaries will not be subject to Section 6.01, Section 6.02, Section 6.03, Section 6.04, Section 6.05, Section 6.09 (but only with respect to any Person that would otherwise be required to become a Subsidiary Guarantor after the date of commencement of the applicable Suspension Period) and Section 6.12(a)(1)(d) hereof (collectively, the "Suspended Covenants").

(b) During a Suspension Period (as defined below), the Company may not designate any of its Subsidiaries as Unrestricted Subsidiaries pursuant to the second sentence of the definition of "Unrestricted Subsidiary."

(c) In the event that the Company and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Financing Agreement for any period of time as a result of the foregoing, and on any subsequent date (the "Reversion Date") the Series 2019 Bonds no longer have an Investment Grade Rating, then the Suspended Covenants will be reinstated and the Company and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Financing Agreement with respect to future events.

(d) The period of time between the Suspension Date and the Reversion Date is referred to in this Financing Agreement as the "Suspension Period". Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds will be reset to zero for purposes of Section 6.04.

(e) In the event of any such reinstatement, no action taken or omitted to be taken by the Company or any Restricted Subsidiary or events occurring prior to such reinstatement with respect to any of the Suspended Covenants will give rise to a Default or Event of Default under this Financing Agreement with respect to the Series 2019 Bonds; provided that:

(1) with respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments made will be calculated as though Section 6.01 had been in effect prior to, but not during, the Suspension Period;

(2) all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified to have been incurred or issued pursuant to Section 6.03(b)(4);

(3) any Affiliate Transaction entered into after the Reversion Date pursuant to an agreement entered into during any Suspension Period will be deemed to be permitted pursuant to Section 6.05(b)(7);

(4) any encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Subsidiary Guarantor to take any action described in Section 6.02(a) that becomes effective during any Suspension Period will be deemed to be permitted Section 6.02(b)(1);

(5) all Liens permitted to be created, incurred or assumed during the Suspension Period will be deemed to have been outstanding on the Closing Date, so that they are classified as permitted under clause (11) of the definition of "Permitted Liens"; and

(6) all Investments made during the Suspension Period will be deemed to have been outstanding on the Closing Date, so that they are classified as Permitted Investments permitted under clause (5) of the definition of "Permitted Investments."

(f) Notwithstanding that the Suspended Covenants may be reinstated after the Reversion Date, (i) no Default, Event of Default or breach of any kind will be deemed to exist under this Financing Agreement, the Series 2019 Bonds, the Indenture, or the Guarantees with respect to the Suspended Covenants, and none of the Company or any of its Restricted Subsidiaries will bear any liability for any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising during a Suspension Period, in each case, as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or, upon termination of the Suspension Period or after that time, based on any action taken or event that occurred during the Suspension Period) and (ii) following a Reversion Date, the Company and each Restricted Subsidiary will be permitted, without causing a Default or Event of Default, to honor, comply with or otherwise perform any contractual commitments or obligations arising during any Suspension Period (that were permitted to be entered into at such time) and to consummate any transactions contemplated thereby.

(g) Upon the Reversion Date, the obligation to grant Guarantees pursuant Section 6.9 will be reinstated (and the Reversion Date will be deemed to be the date on which any guaranteed Indebtedness was incurred for purposes of Section 6.09).

(h) Neither the Trustee nor the Issuer shall have any duty to (i) monitor the ratings of the Series 2019 Bonds, (ii) determine whether a Covenant Suspension Event or Reversion Date has occurred, or (iii) notify Holders of any of the foregoing.

Section 6.11 Limitations on Activities of the Parent.

(a) Parent shall not conduct, transact or otherwise engage in any business or operations other than (i) owning Capital Stock of the Company and operations incidental thereto, (ii) the maintenance of its legal existence and general operations (including the ability to incur fees, costs and expenses relating to such maintenance and general operations including professional fees for legal, tax and accounting issues), (iii) the performance of its obligations, including the incurrence, and performance in respect, of guarantees and other liabilities, with respect to the BFA Loan Obligations, the Notes Indenture, the Term Loan Credit Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings, (iv) any public offering of its common stock or any other issuance of its Equity Interests or any corporate transaction permitted under this Financing Agreement, (v) financing activities, including, without limitation, Credit Facilities, the issuance of securities, incurrence of debt, payment of dividends, making contributions to the capital of its Subsidiaries and guaranteeing any Indebtedness, liabilities or other obligations of its Subsidiaries or Parent Companies and the performance of its obligations with respect thereto, (vi) participating in tax, accounting and other administrative matters as a member of the consolidated group of Parent and the Company or any direct or indirect parent of Parent and its Subsidiaries, (vii) holding any cash or property received in connection with Restricted Payments made by the Company in accordance with Section 6.01 hereof pending application thereof by Parent, (viii) providing indemnification to officers and directors, (ix) conducting, transacting or otherwise engaging in any business or operations of the type that it conducts, transacts or engages in on the Closing Date, (x) any transaction that Parent is permitted to enter into or consummate under this Financing Agreement, the Notes Indenture, the Term Loan Credit Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings and any transaction between Parent and the Company or any Restricted Subsidiary permitted under this Financing Agreement, the Notes Indenture, the Term Loan Credit Agreement, Credit Facilities, Other Pari Passu Lien Obligations or equipment or commercial building financings, (xi) subject to the following paragraph, its ownership of the Act 9 Bonds and similar bonds in connection with a Specified Sale and Lease-back Transaction, and (xii) activities incidental to the businesses or activities described in the foregoing clauses (i) through (xi); provided that, notwithstanding the foregoing, Parent shall not create or acquire (by way of amalgamation, merger, consolidation or otherwise) any material direct Subsidiaries, other than the Company or any holding company for the Company.

(b) In addition, neither Parent, as owner of the Act 9 Bonds nor any agent or designee of Parent (including Regions Bank as trustee under the Act 9 Trust Indenture), shall, without the prior written consent of the Collateral Agent:

(1) dispose of any Act 9 Bonds or its economic interests therein;

(2) enforce or exercise, or seek to enforce or exercise, any rights or remedies (including any right of setoff) under the Act 9 Bond Documents (including the enforcement of any right under any other agreement or arrangement to which Parent or its agent or designee and either the City of Osceola or the Company is a party); or

(3) commence or join with any Person (other than the Secured Parties) in commencing, or petition for or vote in favor of, any action or proceeding with respect to such rights or remedies (including in any foreclosure action or any proceeding under any Debtor Relief Laws).

Section 6.12 Merger, Amalgamation, Consolidation or Sale of All or Substantially All Assets.

(a) The Company may not consolidate, amalgamate or merge with or into or wind up into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its assets, in one or more related transactions, to any Person unless:

(1) (A) the Company is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Company), or to which such sale, assignment, transfer, lease, conveyance or other disposition is made, is a Person organized or existing under the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Person, as the case may be, being herein called the "Successor Company"); provided that in the case where the surviving Person is not a corporation, a Guarantor of the BFA Loan Obligations is a corporation;

(B) the Successor Company, if other than the Company expressly assumes all the obligations of the Company under this Financing Agreement, the Series 2019 Note, the Indenture, and the Security Documents pursuant to an amendment to this Financing Agreement and such other supplemental indentures, amendments or other customary documents or instruments, as applicable, and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Company, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(C) immediately after such transaction, no Default exists;

(D) immediately after giving *pro forma* effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the most recently ended Test Period, either:

(i) the Company (or Successor Company, as applicable) would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Test; or,

(ii) the Fixed Charge Coverage Ratio for the Company (or Successor Company, as applicable) would be equal to or greater than the Fixed Charge Coverage Ratio for the Company immediately prior to such transaction;

(E) each Subsidiary Guarantor, unless it is the other party to the transactions described above, in which case Section 6.12(a)(1)(B) will apply, will have by supplemental indenture or otherwise confirmed that its Guarantee applies to such Person's obligations under this Financing Agreement, the Indenture and the Series 2019 Note and its obligations under the Security Documents shall continue to be in effect and it shall enter into such supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Company, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions; and

(F) the Company (or the Successor Company, as applicable), will have delivered to the Trustee and the Issuer an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplements and amendments, if any, comply with this Financing Agreement and, if an amendment to the Financing Agreement, a supplement to the Indenture, or any supplement to any Security Documents is required in connection with such transaction, such supplement or amendment shall require the Company (or the Successor Company, as applicable) to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(G) Collateral owned by or transferred to the Successor Company shall:

(i) continue to constitute Collateral under this Financing Agreement, the Collateral Trust Agreement, and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties; and

(iii) not be subject to any Lien other than Permitted Liens.

Notwithstanding the foregoing, failure to satisfy the requirements of Section 6.12(a)(1)(C) and (D) will not prohibit

(1) the Company consolidating, amalgamating or merging with or into or winding up into (whether or not the Company is the surviving Person), or the sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of its assets, in one or more related transactions, to Parent or a Wholly-Owned Subsidiary of Parent,

(2) the Company consolidating with, amalgamating with or merging with or into, or winding up into an Affiliate of the Company for the purpose of reincorporating the Company in the United States, any state thereof, the District of Columbia or any territory thereof, so long as the amount of Indebtedness of the Company and its Restricted Subsidiaries is not increased thereby,

(3) the Company converting into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Company or the laws of a jurisdiction in the United States (and, if such entity is not a corporation, a Guarantor of the BFA Loan Obligations is a corporation organized or existing under such laws), and

(4) the Company changing its name.

(b) Subject to Section 6.12(f), no Subsidiary Guarantor will, and the Company will not permit any Subsidiary Guarantor to, consolidate, amalgamate or merge with or into or wind up into (whether or not such Subsidiary Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:

(1) (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (such Subsidiary Guarantor or such Person, as the case may be, being herein called the "Successor Person");

(B) the Successor Person, if other than such Subsidiary Guarantor, expressly assumes all the obligations of such Subsidiary Guarantor under this Financing Agreement and such Subsidiary Guarantor's related Guarantee and the Security Documents pursuant to supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Person, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(C) immediately after such transaction, no Default exists;

(D) the Company will have delivered to the Trustee and the Issuer an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplements and amendments, if any, comply with this Financing Agreement and, if an amendment to the Financing Agreement or any supplement to any Security Documents is required in connection with such transaction, such supplement or amendment shall require the Company to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(E) Collateral owned by or transferred to the Successor Person shall:

(i) continue to constitute Collateral under this Financing Agreement, the Collateral Trust Agreement, and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties; and

(iii) not be subject to any Lien other than Permitted Liens; or

(2) the transaction is not prohibited by Section 6.04.

(c) Notwithstanding the foregoing, any Subsidiary Guarantor may (1) merge, amalgamate or consolidate with or into, wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Subsidiary Guarantor or the Company or merge, amalgamate or consolidate with or into, wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to a Restricted Subsidiary of the Company, so long as the resulting entity remains or becomes a Subsidiary Guarantor, (2) merge with an Affiliate of the Company for the purpose of reincorporating the Subsidiary Guarantor in the United States, any state thereof, the District of Columbia or any territory thereof, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Subsidiary Guarantor or the laws of a jurisdiction in the United States, (4) liquidate or dissolve or change its legal form if the Company determines in good faith that such action is in the best interests of the Company and is not materially disadvantageous to the guarantee of the BFA Loan Obligations, or (5) change its name.

(d) In addition, subject to Section 6.12(g), Parent will not consolidate, amalgamate or merge with or into or wind up into (whether or not Parent is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(1) Parent is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Parent) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a Person organized or existing under the laws of the jurisdiction of organization of Parent or the laws of the United States, any state thereof, the District of Columbia, or any territory thereof (Parent or such Person, as the case may be, being herein called the "Successor Parent Guarantor");

(2) the Successor Parent Guarantor (if other than Parent) expressly assumes all the obligations of such Parent under this Financing Agreement, such Parent's related Parent Guarantee and the Security Documents pursuant to supplemental indentures, amendments or other customary documents or instruments and shall cause such amendments, supplements or other documents to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens on the Collateral owned by or transferred to the Successor Parent Guarantor, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions;

(3) immediately after such transaction, no Default exists;

(4) the Company will have delivered to the Trustee and the Issuer an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplement or amendment, if any, comply with this Financing Agreement and, if a supplement, an amendment or any supplement to any Security Documents is required in connection with such transaction, such supplement or amendment shall require Parent and the Company to take all necessary action so that such Lien is perfected to the extent required by the Security Documents; and

(5) Collateral owned by or transferred to the Successor Parent Guarantor shall:

(i) continue to constitute Collateral under this Financing Agreement, the Collateral Trust Agreement, and the Security Documents;

(ii) be subject to the Lien in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties; and

(iii) not be subject to any Lien other than Permitted Liens.

(e) Notwithstanding the foregoing, Parent may (1) merge, amalgamate or consolidate with or into, the Company, (2) merge with an Affiliate of the Company for the purpose of reincorporating Parent in the United States, any state thereof, the District of Columbia or any territory thereof, (3) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of Parent or the laws of a jurisdiction in the United States or (4) change its name.

(f) (1) Each Guarantee by a Subsidiary Guarantor will provide by its terms that it shall be automatically and unconditionally released and discharged and shall thereupon terminate and be of no further force and effect, and no further action by such Subsidiary Guarantor, the Company, the Collateral Agent, or the Trustee is required for the release of such Subsidiary Guarantor's Guarantee, upon:

(i) any sale, exchange, issuance, disposition or transfer (by merger, amalgamation, consolidation or otherwise) of (a) the Capital Stock of such Subsidiary Guarantor, after which the applicable Subsidiary Guarantor is no longer a Restricted Subsidiary, or (b) all or substantially all of the assets of such Subsidiary Guarantor (including to the Company or another Subsidiary Guarantor), in each case if such sale, exchange, issuance, disposition or transfer is made in compliance with the applicable provisions of this Financing Agreement;

(ii) (a) the release or discharge of the guarantee by, or direct obligation of, such Subsidiary Guarantor of Indebtedness under the Term Loan Credit Agreement, the Notes Indenture, the ABL Facility, Other Pari Passu Lien Obligations or Capital Markets Indebtedness that, in any case, constitute ABL Obligations or Fixed Asset Pari Passu Lien Obligations of the Company or any Subsidiary Guarantor, or (b) the release or discharge of such other guarantee that resulted in the creation of such Guarantee, except, in each case, a discharge or release by or as a result of payment under such guarantee or direct obligation (it being understood that, in each case, a release subject to a contingent reinstatement is still a release);

(iii) (a) the designation of any Restricted Subsidiary that is a Subsidiary Guarantor as an Unrestricted Subsidiary or (b) such Subsidiary Guarantor otherwise becoming an Excluded Subsidiary (other than pursuant to clause (1) of the definition thereof); or

(iv) the discharge of the Company's obligations under this Financing Agreement in accordance with its terms; or

(v) the merger, amalgamation or consolidation of any Subsidiary Guarantor with and into the Company, BRS Finance, or a Subsidiary Guarantor that is the surviving Person in such merger, amalgamation or consolidation, or upon the liquidation of a Subsidiary Guarantor following the transfer of all or substantially all of its assets, in each case in a transaction that is not prohibited by this Financing Agreement.

(2) The Company will have the right, upon delivery of an Officer's Certificate and an Opinion of Counsel to the Trustee and Collateral Agent, to cause any Subsidiary Guarantor that has not guaranteed any Indebtedness under the Term Loan Credit Agreement, the Notes Indenture, the ABL Facility, Other Pari Passu Lien Obligations or any Capital Markets Indebtedness that, in any case, constitutes ABL Obligations or Fixed Asset Pari Passu Lien Obligations of any of the Company or any Subsidiary Guarantor, and is not otherwise required by the applicable terms of this Financing Agreement to provide a Guarantee, to be unconditionally released and discharged from all obligations under its Guarantee, and such Guarantee will thereupon automatically and unconditionally terminate and be discharged and of no further force or effect.

(g) The Parent Guarantee will be automatically released upon:

(1) the Company ceasing to be a Wholly-Owned Subsidiary of Parent;

(2) the Company's transfer of all or substantially all of its assets to, or merger with, an entity that is not a Wholly-Owned Subsidiary of Parent in accordance with this Section 6.12, and such transferee entity assumes Company's obligations under this Financing Agreement; or

(3) the Company's obligations under this Financing Agreement are discharged in accordance with the terms hereof.

Section 6.13 Successor Person Substituted. Upon any consolidation, amalgamation or merger, or any winding up, sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company or a Guarantor in accordance with Section 6.12 hereof, the Successor Company, Successor Person or Successor Parent Guarantor, as applicable, formed by such consolidation or amalgamation or into or with which the Company, such Subsidiary Guarantor or Parent, as applicable, is merged or to which such wind up, sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, amalgamation, merger, sale, lease, conveyance or other disposition, the provisions of this Financing Agreement, the Series 2019 Bonds and the Guarantees referring to the Company, such Guarantor, or Parent, as applicable, shall refer instead to the Successor Company, Successor Person or Successor Parent Guarantor, as applicable, and not to the Company, such Subsidiary Guarantor, or Parent as applicable), and may exercise every right and power of the Company, such Subsidiary Guarantor, or Parent, as applicable, under this Financing Agreement, the Series 2019 Bonds, the Guarantees and the Security Documents, as applicable, with the same effect as if such Successor Company, Successor Person or Successor Parent Guarantor, as applicable, had been named as the Company, a Subsidiary Guarantor or Parent, as applicable, herein, and such Subsidiary Guarantor's or Parent's Guarantee and such Subsidiary Guarantor and Parent, as applicable, will be automatically released and discharged from its obligations hereunder, and, in the case of a predecessor Company shall automatically be released from its obligations thereunder; provided that the predecessor Company shall not be relieved from the obligations under this Financing Agreement, the Series 2019 Note, the Guarantees and the Security Documents in the case of any lease.

ARTICLE VII

EVENTS OF DEFAULT

The occurrence and continuation of each of the events referred to in this Article VII shall constitute an "Event of Default":

Section 7.01 Non-Payment. The Company fails to pay (i) when and as required to be paid herein, any amount of principal relating to the Bonds, or (ii) within five (5) Business Days after the same becomes due, any interest or premium relating to the Bonds or any fees payable hereunder; or

Section 7.02 Indenture Default. Existence of an Event of Default under and as defined in Section 7.01(a) or (b) of the Indenture; or

Section 7.03 Other Defaults. Failure by the Company or any Guarantor (not specified in Section 7.01 and 7.02 above and Section 5.01 hereof) for sixty (60) days (or such longer period, not exceeding one hundred eighty (180) days, as is reasonably necessary under the circumstances to remedy such failure) after receipt of written notice given by the Trustee or the Holders of not less than thirty percent (30%) in principal amount of the then Outstanding Bonds to comply with any of its obligations, covenants or agreements (other than a default referred to in Section 7.01 or 7.02 and other than Section 5.01 hereof) contained in this Financing Agreement; or

Section 7.04 Representations and Warranties. Any representation, warranty or certification made by the Company herein shall be untrue in any material respect when made, unless such misrepresentation is capable of remedy and is remedied within thirty (30) days after the earlier of (i) the Trustee giving written notice thereof to the Company and (ii) the Company having actual knowledge of the non-compliance; or

Section 7.05 Cross-default. Default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary) or the payment of which is guaranteed by the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary), other than Indebtedness owed to the Company or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the issuance of the Series 2019 Bonds, if:

(A) such default either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity;

(B) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at its stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate $25.0 million or more at any one time outstanding; and

(C) such default is unremedied and is not waived by the Holders of such Indebtedness prior to the acceleration of the Series 2019 Bonds pursuant to Section 8.02 hereof.

Section 7.06 Insolvency or Liquidation Proceeding.

(a) The Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Issuer made available to the Holders) would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy 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 Bankruptcy 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; or

(v) generally is not paying its debts as they become due;

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

(i) is for relief against the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary), in a proceeding in which the Company or any such Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary), is to be adjudicated bankrupt or insolvent;

(ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary), or for all or substantially all of the property of the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary); or

(iii) orders the liquidation of the Company or any of its Significant Subsidiaries (or any group of Restricted Subsidiaries that, taken together (as of the latest consolidated financial statements of the Company made available to the Holders), would constitute a Significant Subsidiary);

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

Section 7.07 Judgment. Failure by the Company or any Restricted Subsidiary that is a Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of $25.0 million (net of amounts covered by insurance policies), which final judgments remain unpaid, undischarged, unwaived and unstayed for a period of more than ninety (90) days after such judgment becomes final; or

Section 7.08 Invalidity of Bond Documents. Any material provision of the Bond Documents, taken as a whole, at any time after their 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 6.08 or 6.012) or as a result of acts or omissions by the Trustee or the Issuer which does not arise from a breach by the Company, any Guarantor or their respective Subsidiaries of its or their obligations under the Bond Documents or the satisfaction in full of all the Series 2019 Bonds, ceases to be in full force and effect; or the Company, any Guarantor or their respective Subsidiaries contest in writing the validity or enforceability of the Bond Documents, taken as a whole; or the Company, any Guarantor or their respective Subsidiaries denies in writing that it has any or further liability or obligation under the Bond Documents, taken as a whole (other than as a result of a repayment in full of the Series 2019 Bonds), or purports in writing to revoke or rescind the Bond Documents, taken as a whole; or

Section 7.09 Invalidity of Guarantees. The Guarantee of the Parent or any Significant Subsidiary (or any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary) will for any reason cease to be in full force and effect except as contemplated by the terms of this Financing Agreement or be declared null and void in a final non-appealable judgment of a court of competent jurisdiction or any Financial Officer of the Parent or any Guarantor that is a Significant Subsidiary (or the responsible officers of any group of Restricted Subsidiaries that taken together (as of the latest consolidated financial statements of the Company made available to the Holders) would constitute a Significant Subsidiary), as the case may be, denies in writing that it has any further liability under its Guarantee or gives written notice to such effect, other than by reason of the termination of this Financing Agreement or the release of any such Guarantee in accordance with this Financing Agreement; or

Section 7.10 Security.

(a) Failure by the Company or any Restricted Subsidiary to comply for sixty (60) days after notice with its agreements contained in the Security Documents except for a failure that would not be material to the Holders and would not materially affect the value of the Collateral, taken as a whole, or any security document for the benefit of the Pari Passu Lien Secured Parties or any obligation under the Collateral Trust Agreement or Intercreditor Agreement is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, other than in accordance with the terms of the relevant security documents or Collateral Trust Agreement or Intercreditor Agreement; or

(b) With respect to any Collateral having a fair market value in excess of $25.0 million, individually or in the aggregate, (A) the failure of the security interest with respect to such Collateral under the Collateral Trust Agreement, at any time, to be in full force and effect for any reason other than in accordance with their terms and the terms of this Financing Agreement, the Collateral Trust Agreement or the Intercreditor Agreement, if applicable, which failure continues for sixty (60) days or (B) the assertion by the Company or any Guarantor, in any pleading in any court of competent jurisdiction, that any such security interest is invalid or unenforceable.

ARTICLE VIII

REMEDIES UPON DEFAULT

Section 8.01 Cross-Default and Insolvency. Upon the occurrence and continuance of an Event of Default under Section 7.06, whether or not the Company has fully drawn the proceeds of the BFA Loan, the unpaid balance of the amount payable under Section 4.04(a) of this Financing Agreement shall be due and payable immediately without any further action or notice.

Section 8.02 Acceleration. Upon the occurrence and continuance of any Event of Default other than listed in Section 7.06 hereof, and subject to the provisions of the Collateral Trust Agreement and the Intercreditor Agreement, upon the direction to the Trustee of the Holders of not less than thirty percent (30%) in principal amount of the then Outstanding Bonds, whether or not the Company has fully drawn the proceeds of the BFA Loan, the Trustee shall accelerate and declare the unpaid balance of the Series 2019 Note and the amount payable under Section 4.04(a) of this Financing Agreement to be due and payable immediately, *provided*, that concurrently with or prior to such notice the unpaid principal amount of the Series 2019 Bonds shall have been declared to be due and payable under the Indenture. Upon any such declaration such amount shall become and shall be immediately due and payable as determined in accordance with Article VII of the Indenture.

Section 8.03 Other Remedies. Upon the occurrence and continuance of any Event of Default, the Trustee may and upon the direction to the Trustee of the Bond Holders holding not less than thirty percent (30%) in principal amount of the then Outstanding Bonds, the Trustee shall exercise any remedies, or give direction, under the Fixed Asset Pari Passu Lien Collateral Documents or the Intercreditor Agreement, or exercise any remedies otherwise available at law or in equity, in each case, subject to the provisions of the Collateral Trust Agreement and Intercreditor Agreement.

Section 8.04 Records. The Trustee may have access during normal business hours to and may inspect, examine and make copies of, the books and records and any and all data and federal income tax and other tax returns of the Company; *provided*, that the Trustee shall be obligated to protect the confidentiality of such information to the extent required by State and federal law and prevent its disclosure to the public, except the Issuer.

Section 8.05 Enforcement. Upon the occurrence and continuance of any Event of Default, the Issuer or the Trustee may take whatever other action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Financing Agreement, in each case, subject to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement; *provided*, *however*, that acceleration of the unpaid balance of the amount payable under Section 4.04(a) of this Financing Agreement is not a remedy available to the Issuer.

Section 8.06 Adverse Determination. In case the Trustee or the Issuer shall have proceeded to enforce its rights under this Financing Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Issuer, then, and in every such case, the Company, the Trustee and the Issuer shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Issuer shall continue as though no such action had been taken.

Section 8.07 Repayment Default. The Company covenants that, in case an Event of Default shall occur and be continuing with respect to the payment of any amount payable under Section 4.04(a) hereof, then, upon demand of the Trustee, the Company will pay to the Trustee the whole amount that then shall have become due and payable under said Section, with interest at the Default Rate. Interest on overdue payments required under Section 4.04(a) shall be applied as provided in the Indenture.

Section 8.08 Collection. In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law the moneys adjudged or decreed to be payable, subject in each case, to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement.

Section 8.09 Intervention. Subject to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement, in case proceedings shall be pending for the bankruptcy or for the reorganization of the Company under Debtor Relief Law or any other Law, or in case a receiver or trustee shall have been appointed for the property of the Company or in the case of any other similar judicial proceedings relative to the Company, or the creditors or property of the Company, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Financing Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Company, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its reasonable charges and expenses to the extent permitted by the Indenture. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for reasonable compensation and expenses, including reasonable expenses and fees of counsel incurred by it up to the date of such distribution.

Section 8.10 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Financing Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Financing Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees to pay and indemnify the Issuer or the Trustee for the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Issuer or the Trustee.

Section 8.11 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or now or hereafter existing at law or in equity or by statute, but subject to the terms and conditions of the Collateral Trust Agreement and Intercreditor Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or as expressly required in the Collateral Trust Agreement and Intercreditor Agreement. The Trustee and the Bond Holders shall be considered third party beneficiaries for the purposes of enforcing the rights of the Issuer and their own respective rights.

Section 8.12 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Financing Agreement should be breached by the Company and thereafter waived by the Issuer or the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE IX

PREPAYMENT

Section 9.01 Redemption of Series 2019 Bonds with Prepayment Moneys. By the assignment of the rights of the Issuer to the Trustee under this Financing Agreement (other than the Unassigned Issuer's Rights) as is provided in Section 4.05 hereof, the Company agrees to and shall pay or cause to be paid directly to the Trustee any amount permitted or required to be paid by it under this Article IX. All amounts paid or caused to be paid by the Company pursuant to this Article IX which are used to pay principal of, premium, if any, or interest on the Series 2019 Bonds, shall constitute prepaid Financing Payments and shall discharge the Company's obligation to make Financing Payments in such amount under this Financing Agreement.

Section 9.02 Optional Redemption of Series 2019 Bonds. The Company may deliver moneys to the Trustee in addition to Financing Payments or Additional Payments required to be made and direct the Trustee in writing to use the moneys so delivered to redeem or purchase in lieu of redemption some or all of the Series 2019 Bonds called for optional redemption in accordance with Section 4.01(b) of the Indenture and Section 9.01 hereof.

Section 9.03 Mandatory Redemption of Series 2019 Bonds.

(a) The Company shall pay to the Trustee moneys sufficient to pay Sinking Fund Installments or to effect a purchase in lieu of redemption in accordance with the mandatory redemption provisions relating thereto set forth in the Indenture.

(b) Subject to the terms of this Section 9.03, the Company shall prepay the BFA Loan and cause the extraordinary mandatory redemption of the Series 2019 Bonds in accordance with Sections 4.01(c) or 4.01(f) of the Indenture.

(c) Subject to the terms of this Section 9.03, the Company shall prepay the BFA Loan and cause the optional redemption of the Series 2019 Bonds tendered in accordance with Sections 6.04 and 6.08 of this Financing Agreement.

(d) All mandatory prepayments and redemptions pursuant to Section 9.03(b) shall be applied to the prepayment of all Series 2019 Bonds to the extent such prepayment is required under the terms and conditions of the applicable Bond Documents *pro rata* among all such Series 2019 Bonds based on the outstanding principal amount of all such Series 2019 Bonds.

(e) The Company shall prepay the BFA Loan in an amount sufficient to pay the purchase price of any Series 2019 Bonds tendered pursuant to Section 4.06 of the Indenture.

Section 9.04 Actions by Issuer. At the request of the Company or the Trustee, the Issuer shall take all reasonable steps required of it under the applicable provisions of the Indenture or the Series 2019 Bonds to effect the redemption of all or a portion of the Series 2019 Bonds pursuant to this Article IX.

ARTICLE X

NON-LIABILITY OF ISSUER; RELIANCE BY TRUSTEE; INDEMNIFICATION

Section 10.01 Non-Liability of Issuer. The Issuer shall not be obligated to pay the principal of, purchase price or premium, if any, or interest on the Bonds, except from Trust Estate Revenues and other amounts available to the Issuer therefor under the Bond Documents, with no obligation to seek collection thereof. The Company hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Company pursuant to this Financing Agreement, together with other Trust Estate Revenues, including investment income on certain funds held by the Trustee under the Indenture and the Collateral Agent under the Collateral Trust Agreement and Intercreditor Agreement and other amounts available therefor under the Bond Documents, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of, and premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Company shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium or interest, including any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Company, the Issuer or any third party.

Section 10.02 Reliance by Trustee. Whenever reference is made in this Financing Agreement 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 Trustee 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 Trustee, it is understood that in all cases the Trustee shall be acting, giving, withholding, suffering, omitting, taking or otherwise undertaking and exercising the same (or shall not be undertaking or exercising the same) as directed. This provision is intended solely for the benefit of the Trustee 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 or confer any rights or benefits on any party hereto.

Section 10.03 Indemnification.

(a) THE COMPANY RELEASES THE ISSUER AND THE TRUSTEE FROM, AND COVENANTS AND AGREES THAT THE ISSUER AND THE TRUSTEE SHALL NOT BE LIABLE FOR, AND COVENANTS AND AGREES, TO THE EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE ISSUER AND THE TRUSTEE AND THEIR RESPECTIVE MEMBERS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST, ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, LITIGATION AND COURT COSTS, AMOUNTS PAID IN SETTLEMENT AS CONSENTED TO BY THE COMPANY AND AMOUNTS PAID TO DISCHARGE JUDGMENTS), OF EVERY CONCEIVABLE KIND, CHARACTER AND NATURE WHATSOEVER (INCLUDING FEDERAL AND STATE SECURITIES LAWS) ARISING OUT OF, RESULTING FROM OR IN ANY WAY CONNECTED WITH (I) THE PROJECT, OR THE CONDITIONS, OCCUPANCY, USE, POSSESSION, CONDUCT OR MANAGEMENT OF, OR WORK DONE IN OR ABOUT THE PROJECT OR THE OTHER FACILITIES OF THE COMPANY OR ITS AFFILIATES, OR FROM THE PLANNING, DESIGN, ACQUISITION, CONSTRUCTION, REHABILITATION, RENOVATION, IMPROVEMENT, INSTALLATION OR EQUIPPING OF THE PROJECT OR ANY PART THEREOF; (II) THE ISSUANCE, SALE OR RESALE OF ANY SERIES 2019 BONDS OR ANY CERTIFICATIONS OR REPRESENTATIONS MADE IN CONNECTION THEREWITH, THE EXECUTION AND DELIVERY OF THIS FINANCING AGREEMENT, THE INDENTURE OR THE USE OF PROCEEDS CERTIFICATE OR ANY AMENDMENT THERETO AND THE CARRYING OUT OF ANY OF THE TRANSACTIONS CONTEMPLATED BY THE SERIES 2019 BONDS, THE INDENTURE AND THIS FINANCING AGREEMENT; (III) THE TRUSTEE'S ACCEPTANCE OR ADMINISTRATION OF THE TRUSTS UNDER THE INDENTURE, OR THE EXERCISE OR PERFORMANCE OF ANY OF THEIR POWERS OR DUTIES UNDER THE INDENTURE OR THIS FINANCING AGREEMENT; (IV) ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF ANY MATERIAL FACT OR OMISSION OR ALLEGED OMISSION TO STATE A MATERIAL FACT REQUIRED TO BE STATED OR NECESSARY TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING, IN ANY OFFICIAL STATEMENT OR OTHER OFFERING CIRCULAR UTILIZED BY ANY UNDERWRITER OR PLACEMENT AGENT IN CONNECTION WITH THE SALE OF ANY SERIES 2019 BONDS OR IN ANY DISCLOSURE MADE BY THE COMPANY TO COMPLY WITH THE REQUIREMENTS OF S.E.C. RULE 15C2-12; (V) ANY VIOLATION OF ANY ENVIRONMENTAL LAWS OR THE RELEASE OF ANY HAZARDOUS MATERIALS AT, FROM, UNDER OR ON THE PROJECT OR ANY OTHER FACILITIES OF THE COMPANY OR ITS AFFILIATES; (VI) THE DEFEASANCE AND/OR REDEMPTION, IN WHOLE OR IN PART, OF THE SERIES 2019 BONDS; OR (VII) ANY DECLARATION OF TAXABILITY OF INTEREST ON THE SERIES 2019 BONDS, OR ALLEGATIONS THAT INTEREST ON THE SERIES 2019 BONDS IS TAXABLE OR ANY REGULATORY AUDIT OR INQUIRY REGARDING WHETHER INTEREST IN THE SERIES 2019 BONDS IS TAXABLE; *PROVIDED* THAT SUCH INDEMNITY SHALL NOT BE REQUIRED FOR DAMAGES THAT RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF THE PARTY SEEKING SUCH INDEMNITY. THE COMPANY FURTHER COVENANTS AND AGREES, TO THE EXTENT PERMITTED BY LAW, TO PAY OR TO REIMBURSE THE ISSUER AND THE TRUSTEE AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS FOR ANY AND ALL COSTS, REASONABLE ATTORNEYS' FEES AND EXPENSES, LIABILITIES OR OTHER EXPENSES INCURRED IN CONNECTION WITH INVESTIGATING, DEFENDING AGAINST OR OTHERWISE IN CONNECTION WITH ANY SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES, EXPENSES OR ACTIONS, EXCEPT TO THE EXTENT THAT THE SAME ARISE OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ISSUER OR THE TRUSTEE OR THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS CLAIMING SUCH PAYMENT OR REIMBURSEMENT. IN NO EVENT SHALL THE TRUSTEE BE RESPONSIBLE OR LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGE OR ANY KIND WHATSOEVER (INCLUDING LOSS OF PROFIT), IRRESPECTIVE OF WHETHER THE TRUSTEE HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY RESIGNATION OR REMOVAL OF THE TRUSTEE, THE RETIREMENT OF THE SERIES 2019 BONDS AND THE TERMINATION OF THIS FINANCING AGREEMENT OR THE INDENTURE.

(b) THE COMPANY WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, PROTECT, INDEMNIFY AND SAVE THE ISSUER AND THE STATE AND THEIR OFFICERS, AGENTS, AND EMPLOYEES AND ANY PERSON WHO CONTROLS THE ISSUER WITHIN THE MEANING OF THE SECURITIES ACT, HARMLESS FROM AND AGAINST ALL LIABILITIES, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES OF THE ISSUER), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS IN CONNECTION WITH THE TRANSACTION CONTEMPLATED BY THIS FINANCING AGREEMENT OR ARISING FROM OR RELATED TO THE ISSUANCE OR SALE OF THE BONDS, INCLUDING:

(i) ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY IN OR UPON THE PROJECT OR GROWING OUT OF OR CONNECTED WITH THE USE, NON-USE, CONDITION OR OCCUPANCY OF THE TAX-EXEMPT PROJECT OR ANY PART THEREOF, INCLUDING ANY AND ALL ACTS OR OPERATIONS RELATING TO THE ACQUISITION OR INSTALLATION OF PROPERTY OR IMPROVEMENTS. THE FOREGOING INDEMNIFICATION OBLIGATIONS SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE COMPANY, CUSTOMERS, SUPPLIERS OR AFFILIATED ORGANIZATIONS UNDER ANY WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS;

(ii) VIOLATION OF ANY AGREEMENT, PROVISION OR CONDITION OF THIS FINANCING AGREEMENT, THE SERIES 2019 BONDS OR THE INDENTURE, EXCEPT THAT THE COMPANY SHALL NOT BE LIABLE FOR ANY INDEMNIFICATION TO AN INDEMNIFIED PARTY TO THE EXTENT THAT ANY SUCH VIOLATION RESULTS FROM THAT INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT;

(iii) VIOLATION BY THE COMPANY OF ANY CONTRACT, AGREEMENT OR RESTRICTION WHICH SHALL HAVE EXISTED AT THE COMMENCEMENT OF THE TERM OF THIS FINANCING AGREEMENT OR SHALL HAVE BEEN APPROVED BY THE COMPANY;

(iv) VIOLATION BY THE COMPANY OF ANY LAW, ORDINANCE, COURT ORDER OR REGULATION AFFECTING THE TAX-EXEMPT PROJECT OR A PART THEREOF OR THE OWNERSHIP, OCCUPANCY OR USE THEREOF;

(v) WITH RESPECT TO THE INVESTMENT, REBATE, USE, APPLICATION OR DISBURSEMENT OF THE PROCEEDS FROM THE SALE OF THE SERIES 2019 BONDS;

(vi) ANY STATEMENT OR INFORMATION RELATING TO THE EXPENDITURE OF THE PROCEEDS OF THE SERIES 2019 BONDS CONTAINED IN THE USE OF PROCEEDS CERTIFICATE OR SIMILAR DOCUMENT FURNISHED BY THE COMPANY TO THE ISSUER OR TRUSTEE WHICH, AT THE TIME MADE, IS MISLEADING, UNTRUE OR INCORRECT IN ANY MATERIAL RESPECT; AND

(vii) ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF A MATERIAL FACT CONTAINED IN ANY OFFERING MATERIAL RELATING TO THE SALE OF THE SERIES 2019 BONDS (AS FROM TIME TO TIME AMENDED OR SUPPLEMENTED) OR ARISING OUT OF OR BASED UPON THE OMISSION OR ALLEGED OMISSION TO STATE THEREIN A MATERIAL FACT REQUIRED TO BE STATED THEREIN OR NECESSARY IN ORDER TO MAKE THE STATEMENTS THEREIN NOT MISLEADING, OR FAILURE TO PROPERLY REGISTER OR OTHERWISE QUALIFY THE SALE OF THE BONDS OR FAILURE TO COMPLY WITH ANY LICENSING OR OTHER LAW OR REGULATION WHICH WOULD AFFECT THE MANNER WHEREBY OR TO WHOM THE SERIES 2019 BONDS COULD BE SOLD.

PROMPTLY AFTER RECEIPT BY THE ISSUER OR ANY SUCH OTHER INDEMNIFIED PERSON, AS THE CASE MAY BE, OF NOTICE OF THE COMMENCEMENT OF ANY ACTION WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT AGAINST THE COMPANY UNDER THIS SECTION, SUCH PERSON WILL NOTIFY THE COMPANY IN WRITING OF THE COMMENCEMENT THEREOF, AND, SUBJECT TO THE PROVISIONS HEREINAFTER STATED, THE COMPANY SHALL ASSUME THE DEFENSE OF SUCH ACTION (INCLUDING THE EMPLOYMENT OF COUNSEL, WHO SHALL BE COUNSEL SUBJECT TO THE APPROVAL OF THE INDEMNIFIED PERSON, WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD, AND THE PAYMENT OF EXPENSES). INSOFAR AS SUCH ACTION SHALL RELATE TO ANY ALLEGED LIABILITY WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT AGAINST THE COMPANY, THE ISSUER, THE TRUSTEE OR ANY SUCH OTHER INDEMNIFIED PERSON SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL OF THEIR OWN CHOICE IN ANY SUCH ACTION AND TO PARTICIPATE IN THE DEFENSE THEREOF, AND THE REASONABLE FEES AND EXPENSES OF SUCH COUNSEL SHALL BE AT THE EXPENSE OF THE COMPANY. THE COMPANY SHALL NOT SETTLE OR COMPROMISE ANY ACTION OR PROCEEDING DEFENDED BY THE COMPANY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE AFFECTED PARTY, UNLESS SUCH SETTLEMENT OR COMPROMISE (X) INCLUDES AN UNCONDITIONAL RELEASE OF THE AFFECTED PARTY FROM ALL LIABILITY ARISING OUT OF SUCH ACTION OR PROCEEDING AND (Y) DOES NOT INCLUDE A STATEMENT OR ADMISSIONS OF FAULT, CULPABILITY OR A FAILURE TO ACT, BY OR ON BEHALF OF, THE AFFECTED PARTY. THE COMPANY SHALL NOT BE LIABLE FOR ANY SETTLEMENT OF ANY SUCH ACTION EFFECTED WITHOUT ITS CONSENT, BUT IF ANY ACTION IS SETTLED WITH THE CONSENT OF THE COMPANY OR IF THERE BE A FINAL JUDGMENT FOR THE PLAINTIFF IN ANY SUCH ACTION, THE COMPANY SHALL INDEMNIFY AND HOLD HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ANY LOSSES, CLAIMS, DAMAGES, LIABILITIES OR EXPENSES INCURRED OR SUFFERED BY REASON OF SUCH SETTLEMENT OR JUDGMENT.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE PAYMENT AND DISCHARGE OF THE SERIES 2019 BONDS. IF THE TRUSTEE RESIGNS OR IS REPLACED, THE COMPANY'S OBLIGATIONS UNDER THIS SECTION 10.03 SHALL CONTINUE FOR THE BENEFIT OF THE TRUSTEE AS WELL AS THE SUCCESSOR TRUSTEE.

ARTICLE XI

SECURITY DOCUMENTS

Section 11.01 Security Interest. On the Closing Date, the BFA Loan Obligations will be the senior secured obligations of the Company. From and after the Closing Date, pursuant to the terms hereof and of the Fixed Asset Pari Passu Lien Collateral Documents, the due and punctual payment of the principal of, premium (if any) and interest, if any, on, the BFA Loan when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium (if any) and interest, if any, on the BFA Loan and performance and payment of all other obligations of the Company and the Guarantors to the Issuer or, as a result of the assignment of the Issuer's rights hereunder, the Trustee (including, without limitation, the Guarantees), according to the terms hereunder, are secured as provided herein and in the Security Documents.

The Issuer, by its acceptance of the Series 2019 Note, acknowledges the existence and applicability of the Security Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral) as the same may be in effect or may be amended from time to time in accordance with their terms. Each of the Company and the Guarantors acknowledges and agrees that each is bound by the terms of the Security Documents, as the same may be in effect from time to time, and each affirm its agreement to perform its respective obligations thereunder in accordance therewith.

Each of the Company and the Guarantors will do or cause to be done all such acts and things as may be required by the provisions of the Security Documents, to assure and confirm to the Collateral Agent the security interest in the Collateral contemplated by the Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of the BFA Loan Obligations. Each of the Company and the Guarantors will take, and will cause the Subsidiary Guarantors to take, any and all actions reasonably required to cause the Security Documents to create and maintain, as security for the Pari Passu Lien Obligations, a valid and enforceable perfected Lien in and on all the Collateral in favor of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties, in each case, to the extent expressly required by, and with the Lien priority required under, the Pari Passu Lien Debt Documents.

Section 11.02 Collateral Trust Agreement.

This Article XII and the provisions of each other Security Document are subject to the terms, conditions and benefits set forth in the Collateral Trust Agreement. Each of the Company and the Guarantors consents to, and agrees to be bound by, the terms of the Collateral Trust Agreement, as the same may be in effect from time to time, and to perform its obligations thereunder in accordance therewith. The Issuer, by its acceptance and assignment of the Series 2019 Note and of its right, title and interest in and to the Financing Agreement (other than Unassigned Rights), authorizes the Trustee to execute and deliver the Joinder to the Collateral Trust Agreement.

Section 11.03 Collateral Agent.

(1) As of the Closing Date, U.S. Bank National Association is acting as the Collateral Agent for the benefit of the Holders of all Pari Passu Lien Obligations outstanding from time to time.

(2) None of the Company, the Guarantors, or any of their Affiliates may act as Collateral Agent.

(3) The Collateral Agent will hold (directly or through co-trustees or agents), and will be entitled to enforce, all Liens on the Collateral created by the Pari Passu Lien Debt Documents.

(4) Except as provided in the Collateral Trust Agreement or as directed by an Act of Required Pari Passu Lien Secured Parties, or, as applicable, the Controlling Representative, in accordance with the Collateral Trust Agreement, the Collateral Agent will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person;

(ii) to foreclose upon or otherwise enforce any Lien; or

(iii) to take any other action whatsoever with regard to any or all of the Pari Passu Lien Debt Documents, the Liens created thereby or the Collateral.

The Company will deliver to the Trustee copies of all Pari Passu Lien Security Documents delivered to the Collateral Agent.

Section 11.04 Release of Liens on Collateral.

The Collateral Agent's Liens on the Collateral will be released in any one or more of the circumstances described in the Collateral Trust Agreement, the Intercreditor Agreement and the other Security Documents.

Section 11.05 Release of Liens in Respect of BFA Loan Obligations.

The Collateral Agent's Liens upon the Collateral will no longer secure the BFA Loan Obligations, and the right of the Holders of the Series 2019 Bonds to the benefits and proceeds of the Collateral Agent's Liens on the Collateral will terminate and be discharged:

(1) upon the prepayment of the BFA Loan Obligations, in accordance with Article IX hereof;

(2) upon defeasance of the Series 2019 Bonds and any Additional Bonds, in accordance with Article IX of the Indenture;

(3) solely with respect to ABL Priority Collateral, if and to the extent required by the Intercreditor Agreement; and

(4) with respect to the assets of any Guarantor, at the time such Guarantor is released from its Guarantee in accordance with its terms.

Section 11.06 Equal and Ratable Sharing of Collateral by Pari Passu Lien Secured Parties.

Notwithstanding:

(1) anything to the contrary contained in the Security Documents;

(2) the time of incurrence of any Series of Pari Passu Lien Debt;

(3) the order or method of attachment or perfection of any Series of Pari Passu Lien Debt;

(4) the time or order of filing or recording of financing statements, mortgages or other documents filed or recorded to perfect any Lien upon any Collateral;

(5) the time of taking possession or control over any Collateral;

(6) that any Pari Passu Lien may not have been perfected or may be or have become subordinated, by equitable subordination or otherwise, to any other Lien; or

(7) the rules for determining priority under any law governing relative priorities of Liens:

(a) all Pari Passu Liens granted at any time by the Company or any Guarantor will secure, equally and ratably, all present and future Pari Passu Lien Obligations; and

(b) all proceeds of all Pari Passu Liens granted at any time by the Company or any Guarantor will be allocated and distributed equally and ratably on account of the Pari Passu Lien Debt and other Pari Passu Lien Obligations.

In addition, this Section 11.08 is intended for the benefit of, and shall be enforceable as a third party beneficiary by, each present and future Holder of Pari Passu Lien Obligations, each present and future Pari Passu Lien Debt Representative and the Collateral Agent as holder of Pari Passu Liens. The Pari Passu Lien Debt Representative of each future Series of Pari Passu Lien Debt shall be required to deliver a Lien sharing and priority confirmation to the Trustee and the Collateral Agent at the time of incurrence of such Series of Pari Passu Lien Debt.

Section 11.07 Relative Rights.

Nothing in this Financing Agreement or the Security Documents will:

(1) impair, as to the Company and the Issuer, the obligation of the Company to pay principal of, premium and interest on the Series 2019 Note in accordance with its terms or any other obligation of the Company or any other Grantor, including, but not limited to the payment obligations of the Company and Guarantors under this Financing Agreement;

(2) affect the relative rights of Holders of Pari Passu Indebtedness as against any other creditors of the Company or any other Grantor (other than holders of Pari Passu Liens);

(3) restrict the right of any Holder of Pari Passu Indebtedness to sue for payments that are then due and owing (but not enforce any judgment in respect thereof against any Collateral to the extent prohibited by the Collateral Trust Agreement);

(4) restrict or prevent any Holder of Pari Passu Indebtedness, the Pari Passu Collateral Agent or any Pari Passu Lien Debt Representative from exercising any of its rights or remedies upon a Default or Event of Default not restricted or prohibited by the Collateral Trust Agreement; or

(5) restrict or prevent the Collateral Agent from taking any lawful action in an Insolvency or Liquidation Proceeding not specifically restricted or prohibited by the Collateral Trust Agreement.

Section 11.08 Further Assurances.

(a) The Company and each of the other Grantors will do or cause to be done all acts and things that may be required, or that the Collateral Agent from time to time may reasonably request, to assure and confirm that the Collateral Agent holds, for the benefit of the Pari Passu Lien Secured Parties, duly created and enforceable and perfected Liens upon the Collateral, (including any property or assets that are acquired or otherwise become, or are required by any Pari Passu Lien Debt Document to become, Collateral after the date thereof), in each case, as expressly required by, and with the Lien priority required under, the Pari Passu Lien Debt Documents.

(b) The Company and each of the other Grantors will promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions as may be reasonably required, or that the Collateral Agent may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case, as expressly required by the Pari Passu Lien Debt Documents for the benefit of the Pari Passu Lien Secured Parties.

Section 11.09 Intercreditor Agreement.

The Intercreditor Agreement provides, subject to the terms thereof, for the following priority of the Fixed Asset Pari Passu Lien, on the one hand, relative to the ABL Liens, on the other hand:

(1) subject to certain limitations, any Lien on the ABL Priority Collateral to the extent securing any ABL Obligations now or hereafter held by or on behalf of the ABL Agent, or any other ABL Claimholders or any agent or trustee therefor, shall be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any Fixed Asset Pari Passu Lien Obligations; and

(2) the Fixed Asset Pari Passu Lien Obligations on the Notes Priority Collateral will be senior to the ABL Liens on the Fixed Asset Priority Collateral, and, consequently, the holders of any Fixed Asset Pari Passu Lien Obligations will be entitled to receive the proceeds from the disposition of any Fixed Asset Priority Collateral prior to the holders of any ABL Obligations.

Section 11.10 Trustee Duties.

(a) On the Closing Date, the Trustee will execute the Joinder to the Collateral Trust Agreement and will be designated as the Pari Passu Lien Debt Representative for the BFA Loan Obligations. The Trustee shall not be obligated to take any action (or to direct the Collateral Agent to take any action) under the Collateral Trust Agreement or any other Security Document for any of the Series 2019 Bonds without the written direction of the Holders of a majority in aggregate principal amount of the Outstanding Series 2019 Bonds (or the minimum consent for such action required under the Indenture) and may request the direction of the Holders of a majority in aggregate principal amount of the Outstanding Series 2019 Bonds (or the minimum consent for such action required under the Indenture) with respect to any such actions and, upon receipt of the written consent of the Holders of a majority in aggregate principal amount of the Outstanding Series 2019 Bonds (or the minimum consent for such action required under the Indenture) along with security and indemnity satisfactory to the Trustee and the Collateral Agent, shall take such actions.

(b) Neither the Trustee, the Issuer nor any of their officers, directors, employees, attorneys or agents shall be responsible or liable (i) for the legality, enforceability, effectiveness or sufficiency of any of the Security Documents, for the creation, perfection, priority, sufficiency, maintenance, renewal or protection of any Lien, or for any defect or deficiency as to any such matters, or (ii) for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so, or (iii) for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral.

(c) The rights, privileges, protections, immunities and benefits given to the Issuer under this Financing Agreement and the Trustee under the Indenture, including, without limitation, their right to be indemnified and compensated and all other rights, privileges, protections, immunities and benefits set forth in this Financing Agreement and the Indenture are extended to the Trustee when acting under the Collateral Trust Agreement, the Intercreditor Agreement (if applicable) and the other Pari Passu Lien Debt Documents on behalf of the Holders of the Series 2019 Bonds.

(d) The Trustee will not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens on the Collateral.

(e) Whenever an action under the Collateral Trust Agreement requires an Act of Required Pari Passu Lien Secured Parties, the Trustee, in its capacity as Pari Passu Lien Debt Representative, shall be entitled to seek the direction of Holders of a majority in aggregate principal amount of the Outstanding Series 2019 Bonds. Subject to the next succeeding sentence, if the minimum consent or directions of Holders of Series 2019 Bonds for such action required under the Financing Agreement or the Indenture are met, the Trustee shall deliver a written direction to the Collateral Agent on behalf of Holders of Series 2019 Bonds (i) directing such Act of Required Pari Passu Lien Secured Parties and (ii) notifying the Collateral Agent in writing of the aggregate principal amount of such Series 2019 Bonds consenting or directing such action (it being agreed that if the requisite percentage of consent or direction is received by the Trustee, the Trustee shall consent or direct such action on behalf of all of the then Outstanding aggregate principal amount of the Series 2019 Bonds), which upon request of the Collateral Agent, shall be accompanied by indemnity or security acceptable to the Collateral Agent for any losses, liability or expenses that may be incurred in connection with such direction (it being understood that the Trustee, in its individual capacity, shall not be obligated to provide such indemnity or security). Notwithstanding the foregoing, if the requested action requires the consent or direction of each Holder of the Series 2019 Bonds affected thereby, then the Trustee shall not deliver a direction to the Collateral Agent in such Act of Required Pari Passu Lien Secured Parties unless a unanimous consent is obtained for the Holders of the Series 2019 Bonds. For purposes of determining the consent or direction of Holders of the Series 2019 Bonds for an action under the Collateral Trust Agreement that requires an Act of Required Pari Passu Lien Secured Parties, the Series 2019 Bonds registered in the name of, or beneficially owned by, the Company or any Affiliate of the Company will be deemed not to be Outstanding and neither the Company nor any Affiliate of the Company will be entitled to vote such Series 2019 Bonds and the Company shall notify the Trustee and the Collateral Agent in writing whether any of the Series 2019 Bonds are owned by it or any of its Affiliates.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Notices. All notices, certificates or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by certified mail, postage prepaid, addressed to the Issuer, the Company or the Trustee, as follows, and such communications shall also be deemed sufficiently given to the Trustee if sent by facsimile with confirmed receipt.

If to the Issuer, at:	Arkansas Development Finance Authority 900 West Capitol Avenue, Suite 310 Little Rock, Arkansas Attn: President Phone: (501) 682-5900 Fax: (501) 682-5939 Email: Cheryl.schluterman@adfa.arkansas.gov
with a copy to:	Arkansas Development Finance Authority 900 West Capitol Avenue, Suite 310 Little Rock, Arkansas Attn: Vice President – Legal and Tax Phone: (501) 682-5927 Fax: (501) 682-5939 Email: ben.vankleef@adfa.arkansas.gov
If to the Trustee and Paying Agent, at	U.S. Bank National Association Global Corporate Trust Services 1350 Euclid Avenue, Suite 1100 Cleveland, Ohio 44115 Attn: David Schlabach Phone: (216) 623-5987 Email: david.schlabach@usbank.com

If to the Rating Agency, at:	Moody's Investors Service 7 WTC @ 250 Greenwich Street New York, New York 10007 Attn: Michael S. Corelli, CFA Phone: (212) 553-1654 E-mail: michael.corelli@moodys.com Standard & Poor's 55 Water Street New York, New York 10007 Attn: William R. Ferara Phone: (212) 438-1776 E-mail: bill.ferara@spglobal.com
If to the Company, at	Big River Steel LLC 2027 East State Highway 198 Osceola, Arkansas 72370 Attn: Chief Executive Officer
with a copy to:	Big River Steel LLC 2027 East State Highway 198 Osceola, Arkansas 72370 Attn: Chief Financial Officer Phone: (870) 559-3122 E-mail: mcarano@bigriversteel.com
and:	Big River Steel LLC 2027 East State Highway 198 Osceola, Arkansas 72370 Attn: Chief Compliance Officer Phone: (870) 559-3123 E-mail: ltrammell@bigriversteel.com
and:	Baker & Hostetler LLP Key Tower 127 Public Square, Suite 2000 Cleveland, Ohio 44114 Attn: Phillip M. Callesen, Esq. Phone: (216) 861-7884

Any notice given to the Company as provided above shall be deemed to have been given to any affiliate of the Company affected by such notice.

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Trustee. The Issuer, the Company or the Trustee may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 12.02 Severability. If any provision of this Financing Agreement shall be held or deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 12.03 Execution of Counterparts. This Financing Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided*, *however*, that for purposes of perfecting a security interest in this Financing Agreement by the Company on behalf of the Trustee under Article 9 of the Uniform Commercial Code, only the counterpart delivered, pledged, and assigned to the Trustee shall be deemed the original.

Section 12.04 Amendments, Changes and Modifications. After the initial issuance of Series 2019 Bonds and prior to the payment in full of all Bonds, or provision for such payment having been made as provided in the Indenture, this Financing Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the terms of the Indenture.

Section 12.05 Governing Law; Venue. This Financing Agreement is governed by the laws of the State of Arkansas, without regard to the choice of law rules of the State of Arkansas. Venue for any action under this Financing Agreement to which the Issuer is a party shall lie within the district courts of the State of Arkansas, and the parties hereto consent to the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

Section 12.06 Delegation of Duties by Issuer. It is agreed that under the terms of this Financing Agreement and under the terms of the Indenture, the Issuer has delegated certain of its duties hereunder to the Company and to the Trustee. The fact of such delegation shall be deemed sufficient compliance by the Issuer to satisfy the duties so delegated and the Issuer shall not be liable in any way by reason of acts done or omitted by the Company, the Authorized Company Representative or the Trustee. The Issuer shall have the right at all times to act in reliance upon the authorization, representation or certification of the Company, the Authorized Company Representative or the Trustee.

Section 12.07 Authorized Representative. Whenever under the provisions of this Financing Agreement the approval of the Company is required or the Company is required to take some action at the request of the Issuer, such approval or such request shall be given on behalf of the Company by an Authorized Company Representative, and the Issuer and the Trustee shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken.

Section 12.08 Term of the Agreement. This Financing Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as any amounts are due hereunder (other than contingent indemnity or other obligations that survive termination of the Indenture, the Note and this Financing Agreement, but as of such date of determination are not due and payable and for which no claims have been made), any of the Bonds are outstanding or the Trustee holds any moneys under the Indenture, whichever is later. All representations and certifications by the Company as to all matters affecting the tax-exempt status of the Series 2019 Bonds shall survive the termination of this Financing Agreement.

Section 12.09 Binding Effect. This Financing Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns.

Section 12.10 Survival of Fee Obligation. The right of the Issuer and the Trustee to receive any fees or be reimbursed for any expenses incurred pursuant to this Financing Agreement, and the right of the Issuer and the Trustee to be protected from any liability as provided in this Financing Agreement, shall survive the retirement of the Series 2019 Bonds and the termination of this Financing Agreement.

Section 12.11 Non-Recourse Liability. Satisfaction of all obligations of the Company and the Guarantors hereunder shall be had solely from the Company, the Guarantors and the Collateral. No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Company or any Guarantor or any Parent Company will have any liability for any obligations of the Company or the Guarantors under the Series 2019 Bonds, the Guarantees, or this Financing Agreement or for any claim based on, in respect of, or by reason of such obligations or their creation.

Section 12.12 Liability of Issuer Limited to Trust Estate. Notwithstanding anything in this Financing Agreement or in the Series 2019 Bonds, the Issuer shall not be required to advance any moneys derived from any source other than the Trust Estate and other assets pledged under the Indenture for any of the purposes in the Indenture mentioned, whether for the payment of the principal of or interest on the Series 2019 Bonds or for any other purpose of the Indenture. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Financing Agreement, the Series 2019 Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Company under this Financing Agreement.

The Company hereby acknowledges that the Issuer's sole source of moneys to repay the Series 2019 Bonds will be provided by the payments made by the Company or the Collateral Agent to the Trustee pursuant to this Financing Agreement and the Collateral Trust Agreement and Intercreditor Agreement, together with investment income on certain funds held by the Trustee under the Indenture and the Collateral Agent under the Collateral Trust Agreement and Intercreditor Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or redemption price) and interest on the Series 2019 Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Company shall pay such amounts in accordance with Section 4.04 hereof.

The provisions of this Section 11.12 shall be in addition to, and not in lieu of, any other provisions limiting the liability of the Issuer hereunder.

Section 12.13 Waiver of Personal Liability. No member, officer, agent or employee of the Issuer or any direct or indirect owner, director, officer, agent or employee of the Company shall be individually or personally liable for the payment of any principal (or redemption price) or interest on the Series 2019 Bonds or any sum hereunder or under the Indenture or be subject to any personal liability or accountability by reason of the execution and delivery of this Financing Agreement; but nothing herein contained shall relieve any such member, direct or indirect owner, director, officer, agent or employee from the performance of any official duty provided by law or by this Financing Agreement.

Section 12.14 No Constitutional Debt. It is understood and agreed by the Company and the Holders that no covenant, provisions or agreement of the Issuer herein or in the Series 2019 Bonds or in any other document executed by the Issuer in connection with the issuance, sale and delivery of the Series 2019 Bonds, or any obligation herein or therein imposed upon the Issuer or breach thereof, shall give rise to a pecuniary liability of the Issuer, its directors, officers, employees or agents or a charge against the Issuer's general credit or general fund or shall obligate the Issuer, its directors, officers, employees or agents financially in any way. No failure of the Issuer to comply with any term, condition, covenant or agreement herein or in the Indenture shall subject the Issuer, its directors, officers, employees or agents to liability for any claim for damages, costs or other financial or pecuniary charges. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit or general fund of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to the Indenture and the funds and accounts held thereunder and the application of Trust Estate Revenues therefrom and from this Financing Agreement, and from the proceeds of the Series 2019 Bonds, as hereinabove provided.

The Series 2019 Bonds constitute special, limited obligations of the Issuer, payable solely from proceeds of the Series 2019 Bonds, the Trust Estate Revenues pledged to the payment thereof pursuant to the Indenture and this Financing Agreement, and the funds and accounts held under and pursuant to the Indenture and pledged therefor. The Series 2019 Bonds, the interest thereon and any other payments or costs incident thereto do not constitute a debt or general obligation of the Issuer, the State of Arkansas or any political subdivision thereof within the meaning of any constitutional or statutory provisions. No provision in this Financing Agreement or any obligation herein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer, the State or any political subdivision thereof a pecuniary liability or a charge upon their general credit or taxing powers. No officer, director, employee, member or agent of the Issuer shall be personally liable under this Financing Agreement.

NEITHER THE STATE OF ARKANSAS NOR ANY POLITICAL CORPORATION, SUBDIVISION OR AGENCY OF THE STATE OF ARKANSAS WILL BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2019 BONDS, AND NEITHER THE FAITH AND CREDIT NOR ANY TAXING POWERS OF THE ISSUER, THE STATE OF ARKANSAS OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, PURCHASE PRICE FOR OR INTEREST ON THE SERIES 2019 BONDS. THE ISSUER HAS NO TAXING POWER.

IT IS FURTHER UNDERSTOOD AND AGREED BY THE COMPANY AND THE HOLDERS THAT THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL INCUR NO PECUNIARY LIABILITY HEREUNDER AND SHALL NOT BE LIABLE FOR ANY EXPENSES RELATED HERETO, ALL OF WHICH THE COMPANY AGREES TO PAY. IF, NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS INCUR ANY EXPENSE, OR SUFFER ANY LOSSES, CLAIMS OR DAMAGES OR INCURS ANY LIABILITIES, THE COMPANY WILL INDEMNIFY AND HOLD HARMLESS THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS FROM THE SAME AND WILL REIMBURSE THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS IN RELATION THERETO, AND THIS COVENANT TO INDEMNIFY, HOLD HARMLESS AND REIMBURSE THE ISSUER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL SURVIVE PAYMENT AND DISCHARGE OF THE SERIES 2019 BONDS.

Section 12.15 Certificates of the Company. Any certificate signed by an Authorized Company Representative and delivered pursuant to the Bond Documents or any of the other related documents or to be executed and delivered in accordance with the Indenture shall be deemed a representation and warranty by the Company as to the statements made therein.

Section 12.16 Complete Agreement. The parties agree that the terms and conditions of this Financing Agreement supersede those of all previous agreements between the parties relative to the Series 2019 Bonds other than the Purchase Agreement, and that this Financing Agreement, together with the documents referred to in this Financing Agreement, contains the entire agreement relative to the Series 2019 Bonds between the parties hereto.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS FINANCING AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS FINANCING AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, the Arkansas Development Finance Authority has caused this Financing Agreement to be executed in its name and its seal to be hereunto affixed by its duly authorized officer, and each of the Company, Holdings, and BRS Finance has caused this Financing Agreement to be executed in its name all as of the date first above written.

[SEAL]

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: /s/ Cheryl Schluterman
Name: Cheryl Schluterman
Title: President

[Signature Page to Bond Financing Agreement]

IN WITNESS WHEREOF, the Arkansas Development Finance Authority has caused this Financing Agreement to be executed in its name and its seal to be hereunto affixed by its duly authorized officer, and each of the Company, Holdings, and BRS Finance has caused this Financing Agreement to be executed in its name all as of the date first above written.

BIG RIVER STEEL LLC

By: /s/ David Stickler
Name: David Stickler
Title: Chief Executive Officer

BRS FINANCE CORP.

By: /s/ David Stickler
Name: David Stickler
Title: Chief Executive Officer

BRS INTERMEDIATE HOLDINGS LLC

By: /s/ David Stickler
Name: David Stickler
Title: Chief Executive Officer

EXHIBIT A

Description of the Tax-Exempt Project

The "Tax-Exempt Project" consists of the acquisition, construction, improvement, development, equipping and furnishing of an approximately 700,000 square foot expansion of the existing flat-rolled steel mill, its supporting infrastructure, and related facilities that manufacture, refine and process steel located on approximately 2,000 acres in Osceola, Mississippi County, Arkansas.

The Company currently operates a technologically advanced EAF steel facility, which is commonly referred to as the Flex Mill. From its initial conception, the Company's Flex Mill facility was designed to accommodate the Tax-Exempt Project. The Tax-Exempt Project includes the addition of a second EAF, off-gas system, refining station, caster, tunnel furnace and down coiler to double production of HRC and fully utilize the Company's existing hot rolling mill, RH degasser and downstream processing lines. At initial construction and development, the operational and logistical footprint of the Company's Flex Mill was designed to support the additional machinery and equipment required for the Tax-Exempt Project and to allow for the increased flow of inbound raw materials and outbound products relating to and resulting from the Tax-Exempt Project. As a result, the majority of the Tax-Exempt Project involves the acquisition and installation of equipment without the necessity to expand or upgrade the Company's Flex Mill's existing infrastructure.

The totality of the Phase II expansion includes not only the Tax-Exempt Project, a portion of which will be financed with proceeds of the Series 2019 Bonds, but also a number of downstream processing expansion initiatives expected to increase the capabilities of the Company's finishing mill, including installing NGO FP equipment and a second coating line focused on additional automotive applications. The portions of the Phase II expansion that are not eligible for tax-exempt financing under the Code are not included within the Tax-Exempt Project and are specifically excluded therefrom.

EXHIBIT B

Form of Closed End Line of Credit Promissory Note
Series 2019

$487,000,000 May 31, 2019

BIG RIVER STEEL LLC, a Delaware limited liability company (the "Company"), for value received, hereby promises to pay to Arkansas Development Finance Authority (the "Issuer"), or assigns, on the dates specified and in the manner set forth in the Financing Agreement (as hereinafter defined), the principal sum of $487,000,000, subject to prior payment as may be required or permitted in accordance with the Indenture (as hereinafter defined) and the Financing Agreement, with interest on the unpaid principal sum, from the date hereof, until the maturity of the Series 2019 Bonds (as hereinafter defined), at the then interest rate provided in the Series 2019 Bonds, as hereinafter defined. Interest shall be payable at the interest rates payable on the Series 2019 Bonds, and the principal of, premium, if any, and interest on this Note shall be payable at the times as set forth in more detail in the Financing Agreement and the Indenture.

Payments shall be made in lawful money of the United States of America in immediately available funds on the date payment is due, at the designated corporate trust office of U.S. Bank National Association, as trustee (the "Trustee"), in Cleveland, Ohio, or at such other place as the Trustee may direct in writing.

The Issuer, by the execution of the Indenture, as hereinafter defined, and the assignment form at the foot of this Note, is assigning this Note and the payments thereon, without recourse or warranty, to the Trustee acting pursuant to the Trust Indenture dated as of May 31, 2019 (the "Indenture"), between the Issuer and the Trustee as security for the Issuer's $487,000,000 in aggregate principal amount of Industrial Development Revenue Bonds (Big River Steel Project), Series 2019 (the "Series 2019 Bonds"), as issued pursuant to the Indenture. Payments of principal of and interest on this Note shall be made directly to the Trustee for the account of the Issuer pursuant to such assignment and applied only to the principal of and interest on the Series 2019 Bonds. All obligations of the Company hereunder shall terminate when all sums due and to become due pursuant to the Indenture, this Note, the Financing Agreement, as hereinafter defined, and the Series 2019 Bonds have been paid, excluding contingent indemnity or other obligations that survive termination of the Indenture, this Note and the Financing Agreement, but as of such date of determination are not due and payable and for which no claims have been made.

In addition to the payments of principal and interest specified in the first paragraph hereof, the Company shall also pay such additional amounts, if any, which, together with other moneys available therefor pursuant to the Indenture, may be necessary to provide for payment (i) when due (whether at maturity, by acceleration or call for redemption, mandatory sinking fund redemption or otherwise) of principal and purchase price of, premium, if any, and interest on the Series 2019 Bonds, (ii) when due of all amounts payable by the Company pursuant to the Financing Agreement, and (iii) when due of all amounts payable to the Trustee pursuant to the Indenture.

The Company shall have the option or may be required to prepay this Note in whole or in part upon the terms and conditions and in the manner specified in the Bond Financing Agreement dated as of May 31, 2019 (the "Financing Agreement"), between the Issuer and each of the Company, BRS Finance Corp., and BRS Intermediate Holdings LLC.

This Note evidences a multi-advance line of credit. Subject to and upon the satisfaction of the terms and conditions of the Financing Agreement and the Indenture, the Company may request one or more draws under this Note in accordance and compliance with the Indenture. The aggregate outstanding amount of such draws shall not exceed the full principal amount of this Note.

This Note is issued pursuant to the Financing Agreement as evidence of certain of the Company's payment obligations thereunder and is entitled to the benefits and subject to the conditions thereof, including the provisions thereof that the Company's obligations thereunder and hereunder shall be unconditional. All the terms, conditions and provisions of the Financing Agreement and the applicable provisions of the Series 2019 Bonds and the Indenture are, by this reference thereto, incorporated herein as a part of this Note.

In case an Event of Default (as defined in the Financing Agreement) shall occur, the principal of and interest on this Note may be declared immediately due and payable as provided in the Financing Agreement. This Note shall be governed by, and construed in accordance with, the laws of the State of Arkansas.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS NOTE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS NOTE ONLY BY ANOTHER WRITTEN AGREEMENT.

IN WITNESS WHEREOF, the Company has caused this Note to be executed in its limited liability company name by its duly authorized officer, all as of the date first above written.

BIG RIVER STEEL LLC

By: _____
Name:
Title:

ASSIGNMENT

Arkansas Development Finance Authority (the "Issuer"), hereby irrevocably assigns, without recourse or warranty, the foregoing Note to U.S. Bank National Association, as trustee (the "Trustee") under a Trust Indenture dated as of May 31, 2019 (the "Indenture"), between the Issuer and the Trustee and hereby directs Big River Steel LLC, as the maker of the Note, to make all payments of principal of and interest thereon directly to the Trustee at its designated corporate trust office in Cleveland, Ohio, or at such other place as the Trustee may direct in writing. Such assignment is made as security for the payment of the Issuer's $487,000,000 in aggregate principal amount of Industrial Development Revenue Bonds (Big River Steel Project), Series 2019, issued pursuant to the Indenture.

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: _____
Name: Cheryl Schluterman
Title: President

EXHIBIT C

FORM OF AMENDMENT TO FINANCING AGREEMENT
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

[ ] Amendment to Bond Financing Agreement (this "_____ Amendment"), dated as of [ ], among [ ] (the "Guaranteeing Subsidiary"), a subsidiary of Big River Steel LLC, a Delaware limited liability company (the "Company"), Arkansas Development Finance Authority, a public body corporate and politic created and existing under the Act (the "Issuer"), BRS Finance Corp., a Delaware corporation ("BRS Finance"), and BRS Intermediate Holdings LLC, a Delaware limited liability company ("Holdings" or "Parent").

W I T N E S S E T H

WHEREAS, the Company, the Issuer, BRS Finance and Holdings have heretofore executed and delivered, and the Issuer has assigned to the Trustee, a Bond Financing Agreement (as amended, supplemented or modified from time to time, the "Financing Agreement"), dated as of May 31, 2019, relating to the issuance of $487,000,000 aggregate principal amount of the Issuer's Industrial Development Revenue Bonds (the "Bonds") with such Bonds issued pursuant to a Trust Indenture dated as of May __, 2019 by and between the Issuer and U.S. Bank National Association, as Trustee (the "Indenture");

WHEREAS, the Financing Agreement provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Issuer an amendment to the Financing Agreement pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's Obligations under the Bonds and the Indenture on the terms and conditions set forth herein and under the Indenture (the "Guarantee"); and

WHEREAS, pursuant to Article XI of the Indenture pursuant to which such Bonds were issued, the parties hereto may execute and deliver this _____ Amendment without the consent of the Holders of the Bonds.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. The Guaranteeing Subsidiary acknowledges that it has received and reviewed a copy of the Financing Agreement, the Indenture and all other documents it deems necessary to review in order to enter into this _____ Amendment and (i) hereby joins and becomes a party to the Financing Agreement as indicated by its signature below as a Guarantor and (ii) acknowledges and agrees to (x) be bound by the Financing Agreement as a Guarantor and (y) perform all obligations and duties required of a Guarantor pursuant to the Financing Agreement.

(3) No Recourse Against Others. No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Company, BRS Finance, or any Guarantor or any Parent Company will have any liability for any obligations of the Company or BRS Finance or the Guarantors under the Bonds, the Guarantees, the Indenture, the Financing Agreement or this _____ Amendment or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting Bonds waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Bonds.

(4) Governing Law. THIS _____ AMENDMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARKANSAS.

(5) Counterparts. The parties may sign any number of copies of this _____ Amendment. Each signed copy shall be an original, but all of them together represent the same agreement. This _____ Amendment may be executed in multiple counterparts, which, when taken together, shall constitute one instrument. The exchange of copies of this _____ Amendment and of signature pages by facsimile or electronic (by '.pdf' or other format) transmissions shall constitute effective execution and delivery of this _____ Amendment as to the parties hereto and may be used in lieu of the original _____ Amendment for all purposes. Signatures of the parties hereto transmitted by facsimile or electronically (by '.pdf' or other format) shall be deemed to be their original signatures for all purposes.

(6) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(7) The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this _____ Amendment or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

(8) Benefits Acknowledged. Upon execution and delivery of this _____ Amendment the Guaranteeing Subsidiary will be subject to the terms and conditions set forth in the Financing Agreement. The Guaranteeing Subsidiary acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Financing Agreement and this _____ Amendment and that its obligations as a result of this _____ Amendment are knowingly made in contemplation of such benefits.

(9) Successors. All agreements of the Guaranteeing Subsidiary in this _____ Amendment shall bind its successors, except as otherwise provided in this _____ Amendment. All agreements of the other parties in this _____ Amendment shall bind their successors.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

BIG RIVER STEEL LLC

By: _____
Name:
Title:

BRS FINANCE CORP.

By: _____
Name:
Title:

BRS INTERMEDIATE HOLDINGS LLC

By: _____
Name:
Title:

[SEAL]

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

By: _____
Name:
Title:

Exhibit 10.3.2

ARKANSAS DEVELOPMENT FINANCE AUTHORITY
INDUSTRIAL DEVELOPMENT REVENUE BONDS
(BIG RIVER STEEL PROJECT)
SERIES 2019

CERTIFICATE CONFIRMING DEFINITIONS ANNEX

The undersigned parties each hereby certify that the attached Definitions Annex is the document referenced and incorporated in the various documents, agreements and certificates relating to the above-referenced bonds.

IN TESTIMONY WHEREOF, the undersigned has hereunto set my hand as of this 31st day of May, 2019.

[Signature pages follow]

BIG RIVER STEEL LLC

By: /s/ David Stickler
David Stickler, Chief Executive Officer

BRS INTERMEDIATE HOLDINGS LLC

By: /s/ David Stickler
David Stickler, Chief Executive Officer

BRS FINANCE CORP.

By: /s/ David Stickler
David Stickler, Chief Executive Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ David A. Schlabacl
Name: David A. Schlabacl
Title: Vice President

Signature Page to Certificate re Definitions Annex

ARKANSAS DEVELOPMENT FINANCE AUTHORITY, as Issuer

By: /s/ Cheryl Schluterman
Cheryl Schluterman, President

Signature Page to Certificate re Definitions Annex

DEFINITIONS ANNEX

"*2019 Bonds*" means the bonds designated as the "Arkansas Development Finance Authority Industrial Development Revenue Bonds (Big River Steel Project), Series 2019."

"*ABL Agent*" means Goldman Sachs Bank USA and any successors thereof under the ABL Facility, acting as administrative agents on behalf of the ABL Facility Lenders.

"*ABL Cap Amount*" has the meaning specified in the definition of "*ABL Obligations*."

"*ABL Claimholders*" means, at any relevant time, the holders of ABL Obligations and/or the Excess ABL Obligations at that time, including the ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent under the loan documents for the ABL Facility, the ABL Hedge Provider and the ABL Cash Management Provider (as each such term is defined in the Intercreditor Agreement), and the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, any former ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent, ABL Hedge Provider and ABL Cash Management Provider to the extent that any Obligations owing to such Persons were incurred while such Persons were ABL Facility Lenders, issuing banks of letters of credit issued pursuant to the ABL Facility, the ABL Agent, ABL Hedge Provider or ABL Cash Management Provider, as applicable, and such Obligations have not been paid or satisfied in full.

"*ABL Facility*" means (i) the Credit Agreement, dated as of August 23, 2017, among the Company, any Restricted Subsidiary of the Company designated as a "Borrower" or "Credit Party" thereunder, the lenders party thereto, Goldman Sachs Bank USA (or an affiliate thereof) as administrative agent, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original agents, lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness thereunder or under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof, and (ii) whether or not the facility referred to in clause (i) remains outstanding, if designated in an Officer's Certificate delivered to the Trustee as "ABL Facility" until such time as the Company subsequently delivers an Officer's Certificate to the Trustee to the effect that such facility will no longer constitute "ABL Facility", including one or more (A) debt facilities or commercial paper facilities, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables) or letters of credit, (B) debt securities, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances), or (C) instruments or agreements evidencing any other Indebtedness, in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

"*ABL Facility Lenders*" means the lenders or holders of Indebtedness under the ABL Facility.

"*ABL Obligations*" means, subject to clause (5) hereof, the following:

(1) the "Obligations" (as defined in the ABL Facility);

(2) all ABL Hedging Obligations (as defined in the Intercreditor Agreement);

(3) all ABL Cash Management Obligations (as defined in the Intercreditor Agreement);

(4) to the extent any payment with respect to any ABL Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any Fixed Asset Pari Passu Lien Claimholders, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of the Intercreditor Agreement and the rights and obligations of the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to be reinstated and outstanding as if such payment had not occurred. To the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the loan documents for the ABL Facility are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "ABL Obligations"; and

(5) notwithstanding the foregoing, if the sum of: (1) Indebtedness for borrowed money constituting principal outstanding under the ABL Facility and the other loan documents for the ABL Facility; plus (2) the aggregate face amount of any letters of credit issued but not reimbursed under the ABL Facility, is in excess of (i) so long as the Senior Secured Notes and the Obligations under the Term Loan Agreement remain outstanding, $350,000,000 in the aggregate and (ii) after discharge in full (pursuant to a covenant defeasance, legal defeasance, upon maturity or otherwise) of the Senior Secured Notes and the Obligations under the Term Loan Credit Agreement and with the requisite consent of any other then-outstanding Pari Passu Lien Secured Parties necessary to effectuate required amendments to the Fixed Asset Pari Passu Lien Collateral Documents and the Intercreditor Agreement, other than Holders of the Bonds, $500,000,000 (the "*ABL Cap Amount*"), then only that portion of such Indebtedness and such aggregate face amount of letters of credit equal to the ABL Cap Amount shall be included in ABL Obligations and interest and reimbursement obligations with respect to such Indebtedness and letters of credit shall only constitute ABL Obligations to the extent related to Indebtedness and face amounts of letters of credit included in the ABL Obligations.

"*ABL Priority Collateral*" means the following of any Grantor: (i) Accounts and chattel paper, in each case other than to the extent constituting identifiable proceeds of Fixed Asset Priority Collateral; (ii) deposit accounts, securities accounts and commodity accounts (and all cash, checks and other negotiable instruments, funds, securities, commodity contracts and other evidences of payment or other assets held therein) (but, in any event, excluding the Revenue Account (which will be used, among other things, for deposit of identifiable proceeds of Fixed Asset Priority Collateral), other Fixed Asset Accounts and the Fixed Asset Collateral Proceeds Account); (iii) all Inventory; (iv) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all documents, general intangibles, instruments, commercial tort claims, letters of credit, letter-of-credit rights and supporting obligations; provided, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any Fixed Asset Priority Collateral only that portion that evidences, governs, secures or reasonably relates to ABL Priority Collateral shall constitute ABL Priority Collateral; provided, further, that the foregoing shall not include any intellectual property; (v) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); (vi) insurance and claims against third parties to the extent arising on account of ABL Priority Collateral and all of the proceeds of and payments under all policies of business interruption insurance; and (vii) all proceeds and products of any or all of the foregoing in whatever form received, but excluding any property that is directly acquired prior to the commencement of any case or proceeding under the Bankruptcy Code or any similar Bankruptcy Law with cash proceeds of any ABL Priority Collateral and does not otherwise constitute ABL Priority Collateral upon its acquisition. Subject to certain provisions of the Intercreditor Agreement, upon a Discharge of Fixed Asset Pari Passu Lien Obligations, all Fixed Asset Priority Collateral shall become ABL Priority Collateral.

"*Accounts*" means all present and future "accounts" (as defined in Article 9 of the UCC), whether or not the UCC is applicable thereto, and shall include all rights of payment owed by an issuer of a credit or charge card.

"*Acquired Indebtedness*" means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

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

"*Act*" means the Arkansas Development Finance Authority Act, Title 15, Chapter 5, Subchapters 1 through 3 of the Arkansas Code of 1987 Annotated, as amended.

"*Act 9 Bond Documents*" means (a) the Act 9 Trust Indenture, (b) the Act 9 Lease Agreement, and (c) that certain Payment in Lieu of Taxes Agreement dated as of April 30, 2015, between the City of Osceola and the Company, and all other documents executed in connection therewith, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Act 9 Bonds*" means the bonds issued to Big River Steel Holdings LLC and assigned to Parent under the Act 9 Trust Indenture pursuant to Amendment 65 to the Constitution of State of Arkansas and Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, codified as Ark. Code Ann. Sections 14,164-201 *et seq*. as amended.

"*Act 9 Lease Agreement*" means that certain Lease Agreement dated as of April 30, 2015, between the City of Osceola and the Company, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Act 9 Trust Indenture*" means that certain Trust Indenture dated as of April 30, 2015, between the City of Osceola, as issuer, and Regions Bank, as trustee for Parent as the owner of the Act 9 Bonds issued thereunder, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"*Act of Required Pari Passu Lien Secured Parties*" means, as to any matter,

(1) from and after August 23, 2017, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the Required Term Lenders until the earliest of (x) the Discharge of Credit Agreement Obligations (as such term is defined in the Collateral Trust Agreement), (y) the Outstanding Term Loan Threshold Date (as such term is defined in the Collateral Trust Agreement) and (z) the First Specified Pari Passu Lien Debt Threshold Date (the date on which the earliest of the foregoing clauses (1)(x), (1)(y) and (1)(z) occurs, the "*First Controlling Change Date*");

(2) from and after the First Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the Required Delayed Draw Term Lenders until the earlier of (x) the Discharge of Specified Pari Passu Lien Debt Obligations and (y) the Second Specified Pari Passu Lien Debt Threshold Date (the date on which the earlier of the foregoing clauses (2)(x) and (2)(y) occurs, the "Second Controlling Change Date"); and

(3) from and after the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of, the holders of (or the Pari Passu Lien Debt Representatives representing the holders of) more than 50% of the aggregate outstanding principal amount of Pari Passu Lien Debt; provided, however, that if at any time prior to the Discharge of Pari Passu Lien Obligations the only remaining Pari Passu Lien Obligations are Secured Hedging Obligations, then the term "Act of Required Pari Passu Lien Secured Parties" will mean a direction in writing delivered by the Hedge Bank with the largest amount of Secured Hedging Obligations owed to it. For purposes of this definition, (a) Pari Passu Lien Debt registered in the name of, or beneficially owned by, the Company or any Affiliate of the Company will be deemed not to be outstanding and neither the Company nor any Affiliate of the Company will be entitled to vote such Pari Passu Lien Debt and (b) votes will be determined as described in the Collateral Trust Agreement and in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—C*ollateral Trust Agreement—Voting*".

"*Additional Bonds*" means Bonds issued under Section 2.06 of the Bond Indenture.

"*Additional Pari Passu Lien Debt*" has the meaning specified in clause (1) of the definition of "*Additional Pari Passu Lien Debt Designation*".

"*Additional Pari Passu Lien Debt Designation*" means a designation under the Collateral Trust Agreement pursuant to which the Company designates as Pari Passu Lien Debt thereunder any Funded Debt incurred by the Company or any Subsidiary Guarantor after August 23, 2017 in accordance with the terms of all applicable Pari Passu Lien Debt Documents that states that:

(1) the Company or such other Grantor intends to incur additional Pari Passu Lien Debt ("*Additional Pari Passu Lien Debt*") which will be Pari Passu Lien Debt not prohibited by any Pari Passu Lien Debt Document to be incurred and secured by a Pari Passu Lien equally and ratably with all previously existing and future Pari Passu Lien Debt;

(2) specifies the name and address of the Pari Passu Lien Debt Representative for such Additional Pari Passu Lien Debt for purposes of the Collateral Trust Agreement;

(3) states that the Company and each other Grantor has duly authorized, executed (if applicable) and recorded (or caused to be recorded) in each appropriate governmental office all relevant filings and recordations to ensure that the Additional Pari Passu Lien Debt is secured by the Collateral in accordance with the Pari Passu Lien Security Documents;

(4) attaches a reaffirmation agreement contemplated by the Collateral Trust Agreement, which has been duly executed by the Company and each other Grantor; and

(5) states that the Company has caused a copy of the Additional Pari Passu Lien Debt Designation and the related Collateral Trust Joinder (if any) to be delivered to each then existing Pari Passu Lien Debt Representative.

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

"*After-Acquired Property*" means (i) equipment or fixtures acquired by the Company or any other Grantor after August 23, 2017 which constitute accretions, additions or technological upgrades to the equipment or fixtures that form part of the Fixed Asset Priority Collateral, (ii) any equipment, fixtures and real estate of the Company or any other Grantor acquired after August 23, 2017, (iii) all of the Capital Stock acquired after August 23, 2017 and held by the Company or any other Grantor (other than any Capital Stock that is an Excluded Asset), (iv) substantially all of the other tangible and intangible assets of the Company and each Grantor acquired after August 23, 2017 and (v) any asset or other property, whether personal, real or other, that was designated as an "Excluded Asset," which asset or other property ceases to constitute an Excluded Asset.

"*Anti-Corruption Law"* means any provision of the Foreign Corrupt Practices Act of 1977, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption law.

"*Applicable Collateral Agents*" has the meaning given to such term in the Intercreditor Agreement and in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement".

"*Applicable Procedures*" means, with respect to any selection of Bonds, the rules and procedures of the Depository, Euroclear and Clearstream that apply to such selection, transfer or exchange.

"*Asset Sale*" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction, other than a Specified Sale and Lease-Back Transaction) of the Company or any Restricted Subsidiary (each referred to in this definition as a "*disposition*"); or

(2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT— Bond Financing Agreement—Covenants of the Company— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock") of any Restricted Subsidiary (other than to the Company or another Restricted Subsidiary), whether in a single transaction or a series of related transactions; in each case, other than: (a) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course, (iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Company), (iv) dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business and (v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Company and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course; (b) the disposition of all or substantially all of the assets of the Company or a Restricted Subsidiary in a manner permitted pursuant to the provisions of 6.12 of the Bond Financing Agreement (other than under Section 6.12(b)(2)) and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Covenants of the Company—Merger, Amalgamation, Consolidation or Sale of All or Substantially All Assets" (other than under clause (2) of the fourth paragraph thereof) or any disposition that constitutes a Change of Control; (c) any disposition in connection with the making of any Restricted Payment that is permitted to be made pursuant to Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments" or any Permitted Investment or any acquisition otherwise permitted by the Bond Financing Agreement; (d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value for any individual transaction or series of related transactions of less than the greater of $30.0 million and 20.0% of Consolidated EBITDA of the Company for the most recently ended Test Period (calculated on a *pro forma* basis) determined at the time of the making of such disposition; (e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary (and in the event such disposition of property or assets or issuance of securities was made by the Company or a Guarantor, such disposition of property or assets or issuance of securities is made to a Guarantor); (f) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business; (g) (i) the lease or sub-lease, assignment, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice, (ii) the lease or sub-lease, assignment, license or sublicense of, or co-location arrangement relating to, any real or other property of the Company and its Restricted Subsidiaries for the purpose of facilitating the use by other Persons of such real or other property in connection with the conduct by such other Persons (or their affiliates) of a Similar Business and, in connection with which, the Company or a Restricted Subsidiary or a Parent Company enters into a contract or arrangement with such other Person for the sale or acquisition of products or services, and (iii) the exercise of termination rights with respect to any lease, sub-lease, assignment, license or sublicense or other agreement or arrangement; (h) any issuance, disposition or sale of Equity Interests in, or Indebtedness, assets or other securities of, an Unrestricted Subsidiary; (i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including, for the avoidance of doubt, any casualty event) with respect to assets or the granting of Liens not prohibited by the Bond Financing Agreement; (j) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility, sales of receivables in connection with Receivables Financing Transactions or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings; (k) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after August 23, 2017, including asset securitizations permitted by the Bond Financing Agreement; (l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof; (m) the licensing or sub- licensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice; (n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice; (o) the unwinding of any Hedging Obligations; (p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements; (q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which in the reasonable good faith determination of the Company are not material to the conduct of the business of the Company and its Restricted Subsidiaries taken as a whole; (r) the granting of a Lien that is permitted under Section 6.06 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Liens;" (s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable law; (t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted under the Bond Financing Agreement, which assets are not used or useful in the principal business of the Company and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Company to consummate any acquisition permitted under the Bond Financing Agreement; (u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of the same or similar replacement property; (v) the settlement or early termination of any Permitted Bond Hedge Transaction and the settlement or early termination of any related Permitted Warrant Transaction; and (w) dispositions of property in connection with any Specified Sale and Lease-Back Transaction.

"*Assigned Agreements*" shall mean any agreement, contract or record to which any Grantor is now or may hereafter become a party, in each case as such agreements, contracts or other records may be amended, amended and restated, supplemented or otherwise modified from time to time.

"*Attributable Indebtedness*" means, on any date, in respect of any Capitalized Lease Obligation or Sale and Lease-Back Transaction of any Person, (i) in the case of a Capitalized Lease Obligation or a Sale and Lease-Back Transaction that constitutes a Capitalized Lease Obligation, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP or (ii) in the case of a Sale and Lease-Back Transaction that does not constitute a Capitalized Lease Obligation, the present value (discounted at the interest rate implicit in the transaction) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Lease-Back Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended determined in accordance with GAAP.

"*Authenticating Agent*" means the Trustee and the Registrar for the Bonds and any bank, trust company or other Person designated as an Authenticating Agent for the Bonds by or in accordance with Section 6.13 of the Bond Indenture.

"*Authorized Company Representative*" means the person or persons designated at the time to act on behalf of the Company by written instrument furnished to the Issuer and the Trustee, containing the specimen signature of such person or persons and signed by any officer of the Company. Such instrument may designate an alternate or alternates.

"*Authorized Denominations*" shall mean, with respect to the 2019 Bonds, $100,000 or any integral multiple of $5,000 in excess thereof.

"*Authorized Issuer Representative*" means the Chairman, Vice Chairman, President or any Vice President of the Bond Issuer, or any other person at the time designated to act on behalf of the Bond Issuer by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed by the Chairman, Vice Chairman, President or any Vice President of the Bond Issuer. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized Issuer Representative.

"*Bankruptcy Code*" means Title 11 of the United States Code.

"*Bankruptcy Law*" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors, including for greater certainty, any such law in respect of corporation arrangement, reorganization or scheme, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, winding-up, or arrangement (including corporate statutes).

"*Beneficial Owner*" means, with respect to the Bonds, a Person owning a Beneficial Ownership Interest therein, which has provided written notice to the Trustee of its Beneficial Ownership Interest of such Bond.

"*Beneficial Ownership Interest*" means the right of the owner to receive for its own account, held directly or indirectly with a Direct Participant or Indirect Participant, payments made by the Bond Issuer with respect to a specified principal amount of Bonds with a specified CUSIP held by the Depository under a Book-Entry System pursuant to the Bond Indenture.

"*BFA Loan*" means the loan of the proceeds of the Bonds from the Bond Issuer to the Company, pursuant to the Bond Financing Agreement, and evidenced by the Series 2019 Note.

"*Book-Entry Form" or "Book- Entry System*" means a form or system, as applicable, under which (a) the Beneficial Ownership Interests may be transferred only through a book-entry-only system and (b) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical Bond certificates "immobilized" in the custody of the Depository or the Trustee.

"*Board of Directors*" means, for any Person, the board of directors, board of managers or other governing body of such Person or, if such Person does not have such a board of directors, board of managers or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors.

"*Bond Counsel*" means collectively, Mitchell, Williams, Selig, Gates & Woodyard, PLLC, and Ballard Spahr LLP, or any other firm of attorneys (other than an employee of the Company) satisfactory to the Bond Issuer and nationally recognized as experienced in matters relating to the tax-exempt status of obligations issued by or on behalf of states and political subdivisions.

"*Bond Documents*" means the Bond Indenture, the Bond Financing Agreement, the Purchase Agreement, the Series 2019 Note and the Fixed Asset Pari Passu Lien Collateral Documents.

"Bond Financing Agreement" means that certain Bond Financing Agreement by and between the Bond Issuer, the Company, Parent and BRS Finance Corp. to be dated as of the Closing Date.

"*Bond Financing Payments*" means payments by the Company pursuant to the Bond Financing Agreement towards the principal of, premium, if any, and interest on the Bonds and related expenses.

"*Bondholder*" "*Holder*" or "*Holder of a Bond*" at any time, means the Person in whose name a Bond is registered on the Register pursuant to the Bond Indenture.

"Bond Indenture" means that certain Trust Indenture to be dated as of the Closing Date, by and between the Bond Issuer and the Trustee.

"*Bond Issuer*" means the Arkansas Development Finance Authority, a public body corporate and politic created and existing under the Act together with its successors and assigns.

"Bond Issuer Board" means the Board of Directors of the Bond Issuer.

"*Bond Resolution*" means (a) when used with reference to the 2019 Bonds, the resolution of the Bond Issuer Board providing for their issuance and approving the Bond Financing Agreement, the Bond Indenture and the Purchase Agreement and related matters; and (b) when used with reference to an issue of Additional Bonds, the resolution of the Bond Issuer Board providing for the issuance of the Additional Bonds and approving any amendment or supplement to the Bond Financing Agreement, any Supplemental Indenture and related matters.

"*Bonds*" means the 2019 Bonds and any Additional Bonds.

"*Book-Entry Form*" or "*Book-Entry System*" means a form or system, as applicable, under which (a) the Beneficial Ownership Interests may be transferred only through a book-entry-only system and (b) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Holder, with the physical Bond certificates "*immobilized*" in the custody of the Depository or the Trustee.

"*Borrower Bonds*" mean any Bonds of which ownership is registered in the name of the Company or any Affiliate of Company.

"*Broker-Dealer Regulated Subsidiary*" means any Subsidiary of the Company that is registered as a broker-dealer under the Exchange Act or any other applicable laws requiring such registration.

"*BRS Finance*" means BRS Finance Corp., a Delaware corporation.

"*BRS Intermediate*" means BRS Intermediate Holdings LLC, a Delaware limited liability company.

"*Business Day*" means any day that is not a Legal Holiday.

"*Capex Equity*" means Capital Stock of the Company issued to Parent, the Net Cash Proceeds from the issuance of which, and other cash equity capital contributions by Parent to the Company, the Net Cash Proceeds of which, are used for purposes of Expansion Capital Expenditures.

"*Capital Expenditures"* means all expenditures made by the Company, a Subsidiary Guarantor or a Restricted Subsidiary, as applicable, for the acquisition, leasing (pursuant to a capital lease of fixed or capital assets), construction, development or improvement of assets or additions to equipment (including replacement, capitalized repairs and improvements during such period) that should be capitalized under GAAP on a consolidated balance sheet of the Company and its Restricted Subsidiaries.

"*Capital Markets Indebtedness"* means any Indebtedness consisting of bonds, debentures, notes or other similar debt securities issued in (a) a public offering registered under the Securities Act, (b) a private placement to institutional investors that is resold in accordance with Rule 144A or Regulation S under the Securities Act, whether or not it includes registration rights entitling the holders of such debt securities to registration thereof with the SEC or (c) a private placement to institutional investors. For the avoidance of doubt, the term "Capital Markets Indebtedness" does not include any Indebtedness under commercial bank facilities, Indebtedness incurred in connection with a Sale and Lease-Back Transaction, Indebtedness incurred in the ordinary course of business of the Company, Capitalized Lease Obligations or recourse transfer of any financial asset or any other type of Indebtedness incurred in a manner not customarily viewed as a "securities offering."

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock or shares in the capital of such corporation;

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

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

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

"*Capitalized Lease Obligation*" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP; *provided* that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the "*ASU*") shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of the Bond Financing Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to the Bond Financing Agreement and the Continuing Disclosure Agreement.

"*Capitalized Software Expenditures*" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

"*Captive Insurance Subsidiary*" means any Subsidiary of the Company that is subject to regulation as an insurance company (or any Subsidiary thereof).

"*Cash Equivalents*" means:

(1) United States dollars;

(2) (a) Euros, Yen, Canadian Dollars, Pounds Sterling or any national currency of any participating member state of the EMU; or (b) in the case of any Foreign Subsidiary or any jurisdiction in which the Company or its Restricted Subsidiaries conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500.0 million in the case of U.S. banks and $100.0 million (or the United States dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company) and, in each case, maturing within 36 months after the date of acquisition;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case, having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Company);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable law.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph. Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above; *provided* that such amounts, except amounts used to pay non-dollar denominated obligations of the Company or any Restricted Subsidiary in the ordinary course of business, are converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"*Cash Management Agreement*" means any agreement entered into from time to time by the Company or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

"*Cash Management Obligations*" means Obligations in connection with, or in respect of, Cash Management Services.

"*Cash Management Services*" means (a) commercial credit cards, employee credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft protections, automatic clearing house arrangements and fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services, (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements and (e) any other related services or activities.

"*CFC*" means a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"*CFC Holdco*" means a Domestic Subsidiary substantially all of whose assets consists (directly or indirectly through disregarded entities) of the Capital Stock or indebtedness (in the case of indebtedness, to the extent such indebtedness is treated as equity for U.S. federal income tax purposes) of one or more Subsidiaries that are CFCs.

"*Change of Control*" means the occurrence of any of the following after the Closing Date:

(1) the sale, lease, transfer, conveyance or other disposition in one or a series of related transactions (other than by merger, consolidation, amalgamation or business combination) of all or substantially all of the assets of Parent or the Company and its Subsidiaries, in each case, taken as a whole, to any Person other than one or more Permitted Holders;

(2) the Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of Equity Interests of the Company representing more than fifty percent (50.00%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Equity Interests held by any Permitted Holder will be excluded), unless the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the Board of Directors of the Company; or

(3) the Company ceases to be directly wholly-owned by Parent.

"*Change of Control Offer*" means an electronically delivered or mailed redemption notice with respect to all Outstanding Bonds pursuant to the terms of the Bond Indenture pursuant to which the Company will make an offer to purchase all of the 2019 Bonds as further described in Section 6.08 of the Bond Financing Agreement and in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Offer to Repurchase Upon Change of Control."

"*Clearstream*" means Clearstream Banking, Société Anonyme and its successors.

"*Closing Date*" means, with respect to the 2019 Bonds, the date of delivery of and payment for the 2019 Bonds, being May 31, 2019, and with respect to any Additional Bonds, the date of their delivery and payment.

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

"*Collateral*" means all the assets and properties subject to the Liens created by the Security Documents.

"*Collateral Agent*" means U.S. Bank National Association, in its capacity as the collateral agent under the Collateral Trust Agreement.

"*Collateral Trust Agreement*" means the Collateral Trust Agreement dated as of August 23, 2017, among the Collateral Agent, Goldman Sachs Bank USA, as administrative agent, U.S. Bank National Association, as trustee under the Notes Indenture, the Trustee, the Commercial Building Lender, the Equipment Lessor, each other Pari Passu Debt Representative with respect to Pari Passu Lien Obligations from time to time party thereto and the Loan Parties under the Term Loan Credit Agreement.

"*Collateral Trust Joinder*" means as to any Series of Pari Passu Lien Debt, the written agreement of a representative of holders of such Series of Pari Passu Lien Debt, as set forth in the indenture, credit agreement or other agreement governing such Series of Pari Passu Lien Debt, whereby such Person agrees to become party as a Pari Passu Lien Debt Representative under the Collateral Trust Agreement and whereby such Person, on behalf of itself and each holder of Pari Passu Lien Obligations in respect of the Series of Pari Passu Lien Debt for which such Person is acting as Pari Passu Lien Debt Representative agrees, for the enforceable benefit of all holders of each current and future Series of Pari Passu Lien Debt, each current and future Pari Passu Lien Debt Representative, and each current and future Pari Passu Lien Secured Party and Pari Passu Lien Obligations and as a condition to being treated as Pari Passu Lien Debt under the Collateral Trust Agreement that:

(1) all Pari Passu Lien Obligations will be and are secured equally and ratably by all Pari Passu Liens at any time granted by the Company or any other Grantor to secure any Pari Passu Lien Obligations, whether or not upon property otherwise constituting collateral for such Pari Passu Lien Obligations, and that all such Pari Passu Liens will be enforceable by the Collateral Agent for the benefit of all Pari Passu Lien Secured Party equally and ratably; provided, however, that notwithstanding the foregoing, this provision will not be violated with respect to any particular Collateral and any particular Series of Pari Passu Lien Debt if the Pari Passu Lien Debt Documents in respect thereof prohibit the applicable Pari Passu Lien Debt Representative from accepting the benefit of a Pari Passu Lien on any particular asset or property or such Pari Passu Lien Debt Representative otherwise expressly declines in writing to accept the benefit of a Pari Passu Lien on such asset or property, provided that notwithstanding the foregoing, all amounts on deposit in the Specified Accounts (as such term is defined in the Collateral Trust Agreement) or credited thereto shall be for the benefit of all Pari Passu Lien Secured Parties; provided further that funds in the various debt service reserve accounts and the construction account shall be for the exclusive benefit of specified creditors until those creditors are paid in full, and otherwise the funds on deposit in the Specified Accounts shall be applied to the Pari Passu Lien Obligations in the order provided in, and otherwise in accordance with, the Collateral Trust Agreement and/or the Deposit Agreement, as applicable;

(2) such Person and each holder of Pari Passu Lien Obligations in respect of the Series of Pari Passu Lien Debt for which the undersigned is acting as Pari Passu Lien Debt Representative are bound by the provisions of the Collateral Trust Agreement, including the provisions relating to the ranking of Pari Passu Liens and the order of application of proceeds from the enforcement of Pari Passu Liens; and

(3) the Collateral Agent shall perform its obligations under the Collateral Trust Agreement and the other Pari Passu Lien Debt Documents.

"*Commercial Building Collateral*" means such properties and assets of the Company as are specified in the Commercial Building Security Documents on which Commercial Building Liens have been granted, or purported to be granted.

"*Commercial Building Lender*" means First Security Bank, an Arkansas banking corporation.

"*Commercial Building Lender Obligations*" means all Obligations under the Commercial Building Loan Agreement, including with respect to the Commercial Building Loan.

"*Commercial Building Lien*" means a Lien granted, or purported to be granted, by a Commercial Building Security Document to the Commercial Building Lender to secure Commercial Building Lender Obligations prior to August 23, 2017.

"*Commercial Building Loan*" means the loan made by the Commercial Building Lender under the Commercial Building Loan Agreement.

"*Commercial Building Loan Agreement*" means that certain Loan Agreement, dated as of September 8, 2016, by and between the Company and the Commercial Building Lender, as the same has been amended, supplemented or otherwise modified prior to August 23, 2017 and as in effect on such date, and as may be further amended, supplemented or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Commercial Building Security Documents*" means the Leasehold Mortgage, Assignment of Purchase Option and Security Agreement from the Company to the Commercial Building Lender, made January 31, 2017 by the Company, as mortgagor, to the Commercial Building Lender, as mortgagee, the Amended and Restated Recognition of Leasehold and Security Interest, Nondisturbance and Attornment Agreement made November 17, 2016 among the Company, the City of Osceola, Arkansas, the Equipment Lessor and the Commercial Building Lender, the Easement Agreement, dated as of January 31, 2017, among City of Osceola, as grantor, Commercial Building Lender and the Company, and other grants or transfers for security executed and delivered by the Company creating or perfecting (or purporting to create or perfect) a Lien on properties and assets of the Company in favor of the Commercial Building Lender, in each case as the same has been amended, supplemented or otherwise modified prior to August 23, 2017 and in effect on such date and as may be further amended, supplemented or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Commercial Building Loan Proportion by Value*" means the net proceeds of a Going Concern Sale, *multiplied* by the proportion of (x) $20,316, 283, which is the amount of Project Costs expended by the Company to acquire and construct the Commercial Building Collateral, *divided* by (y) $1,330,000,000, which is the total amount of Project Costs incurred by the Company as of August 23, 2017; *provided* that such amount will not exceed the total amount of the outstanding and unpaid Commercial Building Lender Obligations.

"*Common Collateral*" means all of the assets and property of the Company or any Guarantor, whether real, personal or mixed, in or upon which Liens are granted, or required to be granted, to secure both the ABL Obligations and the Fixed Asset Pari Passu Lien Obligations, including any property subject to Liens granted pursuant to the first and second paragraphs described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement—*Insolvency or Liquidation Proceeding*" to secure both the ABL Obligations and the Fixed Asset Pari Passu Lien Obligations.

"*Company"* means Big River Steel LLC, a Delaware limited liability company, and its successors and assigns.

"*Consolidated Depreciation and Amortization Expense*" means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including, the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses and the amortization of Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"*Consolidated EBITDA*" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h), (l) and (m)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period: (a) total interest expense and, to the extent not reflected in such total interest expense, any losses on Hedging Obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such Hedging Obligations or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers' acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of "Consolidated Interest Expense" pursuant to the definition thereof; *plus* (b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise and similar taxes, and foreign withholding taxes paid or accrued during such period (including any other levies that replace or are intended to be in lieu of such taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of "Consolidated Net Income", and any payments to a Parent Company in respect of such taxes permitted to be made under the Bond Financing Agreement; *plus* (c) Consolidated Depreciation and Amortization Expense for such period; *plus* (d) any other non-cash charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (A) the Company may determine not to add back such non-cash charge in the current period and (B) to the extent the Company does decide to add back such non-cash charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Closing Date, in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus* (e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation; plus* (f) (i) the amount of board of director fees and any management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities and expenses paid or accrued in such period under the Management Services Agreements or otherwise to the extent permitted under the Bond Financing Agreement and (ii) the amount of payments made to optionholders of such Person or any Parent Company in connection with, or as a result of, any distribution being made to equityholders of such Person or its Parent Companies, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted under the Bond Financing Agreement; *plus* (g) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; *plus* (h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus* (i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); *plus* (j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of *FASB Accounting Standards Codification Topic 715—Compensation— Retirement Benefits*, and any other items of a similar nature; *plus* (k) any net loss from operations expected to be disposed of, abandoned or discontinued within twelve months after the end of such period; *plus* (l) the amount of "run rate" cost savings, synergies and operating expense reductions related to restructurings, cost savings initiatives or other initiatives that are projected by the Company in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Company) within 24 months after the end of such period (which cost savings, synergies or operating expense reductions shall be calculated on a *pro forma* basis as though such cost savings, synergies or operating expense reductions had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that "run rate" means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Closing Date) (which adjustments may be incremental to (but not duplicative of) any *pro forma* cost savings, synergies or operating expense reduction adjustments as are appropriate and consistent with the *pro forma* provisions set forth in the definition of Fixed Charge Coverage Ratio); *provided* that such cost savings, synergies and operating expenses are reasonably identifiable and factually supportable; *plus* (m) any payments in the nature of compensation or expense reimbursement made to independent board members; *plus* (n) internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; *plus* (o) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of); *plus* (p) pre-startup expenses; and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period: (a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition); (b) the amount of any non-controlling interest consisting of loss attributable to non -controlling interests of third parties in any non-wholly-owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period; and (c) any income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of).

"*Consolidated Interest Expense*" means, with respect to any Person for any period, without duplication, the sum of:

(1) cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than Non-Recourse Indebtedness, including commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof); *plus*

(2) non-cash interest expense resulting solely from (a) the amortization of original issue discount from the issuance of Indebtedness of such Person and its Restricted Subsidiaries at less than par (excluding the 2019 Bonds, the Senior Secured Notes and any Indebtedness borrowed under the Term Loan Credit Agreement or the ABL Facility and any Non-Recourse Indebtedness), *plus* (b) pay-in-kind interest expense of such Person and its Restricted Subsidiaries payable pursuant to the terms of the agreements governing Indebtedness for borrowed money, excluding, in each case, (i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (2)(a) and (2)(b) above (including as a result of the effects of acquisition method accounting or pushdown accounting), (ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging*, (iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates, (iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness, (v) "additional interest" owing pursuant to a registration rights agreement with respect to any securities, (vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, (vii) penalties and interest relating to taxes, (viii) accretion or accrual of discounted liabilities not constituting Indebtedness, (ix) interest expense attributable to a Parent Company resulting from push-down accounting, (x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting, (xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential), with respect thereto in connection with any acquisition or Investment and (xii) annual agency fees paid to the administrative agents and collateral agents (including any security or collateral trust arrangements related thereto) under any Credit Facilities, including the ABL Facility, the Term Loan Credit Agreement, the Senior Secured Notes and the Bonds. For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"*Consolidated Net Income*" means, for any period, the net income (loss) of the Company and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and intellectual property development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after August 23, 2017 (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost savings initiatives; curtailments and modifications to pension and post- employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) expenses incurred in connection with the issuance of the Bonds and the Senior Secured Notes;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary, and, solely for the purpose of determining the amount available for Restricted Payments under Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Restricted Payments," the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting (*provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period);

(6) solely for the purpose of determining the amount available for Restricted Payments under Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments," the Net Income for such period of any Restricted Subsidiary (other than any Subsidiary Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Company reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration, or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary or any Parent Company, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, Compensation—Stock Compensation or Accounting Standards Codification Topic 505-50, Equity-Based Payments to Non-Employees, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Senior Secured Notes and the 2019 Bonds and the syndication and incurrence of any Credit Facilities or the Term Loan Credit Agreement or Other Pari Passu Lien Obligations), issuance of Equity Interests (including by any direct or indirect parent of the Company), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the 2019 Bonds and other securities and any Credit Facilities or the Term Loan Credit Agreement, Senior Secured Notes or Other Pari Passu Lien Obligations) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, Business Combinations);

(12) accruals and reserves that are established or adjusted in connection with an Investment or an acquisition that are required to be established or adjusted as a result of such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under the Bond Financing Indenture;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815— Derivatives and Hedging or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—Financial Instruments;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, Guarantees, or any comparable regulation;

(17) any non-cash rent expense;

(18) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and

(19) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under the Bond Financing Agreement.

Notwithstanding the foregoing, for the purpose of the Section 6.01 of the Bond Financing Agreement (other than Section 6.01(a)(3)(D) only) and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments" (other than (a)(3)(D) only), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under Section 6.01(a)(3)(D) of the Bond Financing Agreement (or clause (a)(3)(D) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments").

"*Consolidated Secured Debt*" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Company and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien; *provided* that Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. dollar-equivalent principal amount of such Indebtedness.

"*Consolidated Total Debt*" means, as of any date of determination, subject to the definition of "Designated Revolving Commitments," the aggregate principal amount of Indebtedness of the Company and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness; *provided* that Consolidated Total Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The U.S. dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. dollar-equivalent principal amount of such Indebtedness.

"*Construction Fund*" means the fund of that name established pursuant to Section 5.01(b) of the Bond Indenture.

"*Contingent Obligations*" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent: (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (2) to advance or supply funds (a) for the purchase or payment of any such primary obligation, or (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or (3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"*Continuing Disclosure Agreement*" means the Continuing Disclosure Agreement dated as of the Closing Date by and between the Company and the Dissemination Agent.

"*Controlled Investment Affiliate*" means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Company and/or other companies.

"*Controlling Representative*" means:

(1) from and after the Closing Date until the First Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Term Loan Administrative Agent;

(2) from and after the First Controlling Change Date until the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Specified Pari Passu Lien Debt Representative;

(3) from and after the Second Controlling Change Date, but prior to the Discharge of Pari Passu Lien Obligations, the Pari Passu Lien Debt Representative that represents the Series of Pari Passu Lien Debt with the then largest outstanding principal amount (which, if the proviso contained in the Collateral Trust Agreement under the heading Voting and described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—Collateral Trust Agreement—Voting" applies, will be the Series of Pari Passu Lien Debt with the then largest outstanding principal amount which cast its votes); *provided, however*, that if at any time prior to the Discharge of Pari Passu Lien Obligations the only remaining Pari Passu Lien Obligations are Secured Hedging Obligations, then the term "Controlling Representative" will mean the Hedge Bank with the largest amount of Secured Hedging Obligations owed to it.

"*Convertible Indebtedness*" means Indebtedness of the Company (which may be guaranteed by the Guarantors) permitted to be incurred under the terms of the Bond Financing Agreement that is either (a) convertible into common stock of the Company (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of the Company and/or cash (in any amount determined by reference to the price of such common stock).

"*Credit Facilities*" means, with respect to the Company or any Restricted Subsidiary, one or more debt facilities, including the ABL Facility or other financing arrangements (including commercial paper facilities or indentures) providing for revolving credit loans, term loans, note issuances, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and other agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures or credit facilities or commercial paper facilities that replace, refund, supplement, extend, renew, restate, amend, modify or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such exchange, replacement, refunding, supplemental, extended, renewed, restated, amended, modified or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof (*provided* that such increase in borrowings or issuances is permitted by Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock") or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or holders. Any agreement or instrument other than the ABL Facility must be designated in an Officer's Certificate delivered to the Trustee as a "Credit Facility" until such time as the Company subsequently delivers an Officer's Certificate to the Trustee to the effect that such facility will no longer constitute a "Credit Facility."

"*CTA Parties Event of Default*" means a Pari Passu Lien Debt Default, an "Event of Default" under the Equipment Lease Documents or an "Event of Default" under the Commercial Building Loan Agreement, as applicable.

"*CTA Parties Standstill Period*" means with respect to the Equipment Lessor and the Commercial Building Lender in connection with the Going Concern Collateral that constitutes Equipment Lease Collateral and Commercial Building Loan Collateral, respectively, the period of time commencing on the date when the other Lender Representatives and the Collateral Agent receive written notice from a Lender Representative of a CTA Parties Event of Default pursuant to the Collateral Trust Agreement (such date, the "*Standstill Commencement Date*") and ending on the earliest of (x) the date that the Controlling Representative ceases to exercise commercially reasonable efforts to identify a Going Concern Buyer or to direct the Collateral Agent to consummate a Going Concern Sale, (y) the date that the Controlling Representative notifies in writing the Equipment Lessor and the Commercial Building Lender it is no longer pursuing a Going Concern Sale and (z) that date that is 210 days after the Standstill Commencement Date.

"*CTA Parties Loan Documents*" means,

(i) with respect to the Pari Passu Lien Debt Representatives, Pari Passu Lien Debt Documents, the Pari Passu Lien Security Documents, and the Collateral Trust Agreement, with the rights and remedies of the Collateral Agent in connection with any enforcement of Liens as provided in the Collateral Trust Agreement, on behalf of itself and the other Pari Passu Lien Secured Parties, (ii) with respect to the Equipment Lessor, the Equipment Lease Documents and (iii) with respect to the Commercial Building Lender, the Commercial Building Loan Agreement and the Commercial Building Security Documents.

"*Debtor Relief Laws*" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"*Debt Service*" means the principal of and premium (if any) and interest on the Bonds, including on the 2019 Bonds, for any period or payable at any time, whether due on an Interest Payment Date or a Principal Payment Date.

"*Debt Service Fund*" means the fund of that name established pursuant to the Bond Indenture.

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

"*Default Rate"* with respect to a Bond, the interest rate borne by such Bond plus 1% per annum; provided that the Default Rate shall never exceed the Maximum Rate.

"*Deposit Agreement*" means the Security Deposit Agreement, substantially in the form attached to the Collateral Trust Agreement as Exhibit E, (with such changes as may be reasonably requested by the Depository Bank as are customary for its role as a depository thereunder), to be entered between the Company, the Collateral Agent, the ABL Agent (as defined in the Intercreditor Agreement), the Equipment Lessor and the Commercial Building Lender and the Depository Bank, governing the bank accounts established pursuant thereto, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the term thereof. As of the Closing Date, no Deposit Agreement is required under the Collateral Trust Agreement and no Deposit Agreement has been entered into pursuant thereto.

"*Depository*" means any securities depository that is a clearing agency or corporation under federal and state law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of Book-Entry interests in bonds, and to effect transfers of Book-Entry interests in bonds in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"*Depository Bank*" means U.S. Bank National Association, as both a "securities intermediary" and a "bank" under the Deposit Agreement.

"*Designated Non-Cash Consideration*" means the fair market value of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration.

"*Designated Office*" means, as to the 2019 Bonds, initially, as to the Registrar and the Trustee, for Bond transfer/surrender purposes, U.S. Bank National Association, Global Corporate Trust Services, 1350 Euclid Avenue, Suite 1100, Cleveland, Ohio 44115, and thereafter such office as each may designate from time to time; provided, that any change in designation shall be effective not sooner than the fifteenth day following the mailing by first-class mail of notice of that change to the Bond Issuer, the Company, each Holder that is a registered owner not earlier than the fifth Business Day prior to that mailing, the Paying Agent and, in the case of (i) the Registrar, to the Trustee and (ii) the Trustee, to the Registrar.

"*Designated Preferred Stock*" means Preferred Stock of the Company, any Restricted Subsidiary thereof or any Parent Company (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments."

"*Designated Revolving Commitments*" means any commitments to make loans or extend credit on a revolving basis to the Company or any Restricted Subsidiary by any Person other than the Company or any Restricted Subsidiary that have been designated in an Officer's Certificate delivered to the Trustee as "Designated Revolving Commitments" until such time as the Company subsequently delivers an Officer's Certificate to the Trustee to the effect that such commitments will no longer constitute "Designated Revolving Commitments"; *provided* that during such time, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Fixed Charge Coverage Ratio, Total Net Leverage Ratio, Senior Secured Net Leverage Ratio and the availability of any baskets pursuant to the Bond Financing Agreement.

"*Development*" means the ownership, occupation, design, development, construction, system establishment, testing, start-up, commissioning, implementation, optimization, repair, operation, maintenance and use of the Phase II Project through final completion of the Phase II Project as determined by the Board of Directors.

"*DIP Financing*" has the meaning given to such term in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement—Insolvency or Liquidation Proceeding."

"*Direct Agreement*" means any agreement required to be entered into under the Specified Pari Passu Lien Debt Documents or as otherwise entered into by the Company or any other Grantor, a counterparty to any material contract of the Company or such Grantor and the Collateral Agent, that grants the consent of such material contract counterparty to the collateral assignment of the applicable material contract to the Collateral Agent, including the SMS Direct Agreement.

"*Direct Participant*" means a participant as defined in the Letter of Representations.

"*Discharge of ABL Obligations*" means, with respect to any ABL Obligation, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, in any such case in whole or in part.

"*Discharge of Commercial Building Lender Obligations*" means the payment in full in cash of the principal of and interest and premium (if any) on all Commercial Building Lender Obligations and all other Commercial Building Lender Obligations that are outstanding and unpaid at the time such principal and interest is paid (other than contingent indemnification obligations not then due).

"*Discharge of Equipment Lease Obligations*" means the payment in full in cash of all Rent (as defined in the Equipment Lease) and all other Equipment Lease Obligations that are outstanding and unpaid (other than contingent indemnification obligations not then due).

"*Discharge of Fixed Asset Pari Passu Lien Obligations*" means, except to the extent otherwise expressly provided in the Intercreditor Agreement, the occurrence of each of the following clauses (a) through (c): (a) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Fixed Asset Pari Passu Lien Debt Documents; (b) (i) payment in full in cash of all the Secured Hedging Obligations (other than contingent indemnification obligations not then due) and the expiration or termination of all outstanding transactions under the Hedge Agreements or (ii) the cash collateralization of all such Hedging Obligations on terms satisfactory to each applicable Hedge Bank (or other arrangements satisfactory to each such Hedge Bank shall have been made); and (c) termination or expiration of all commitments, if any, to extend credit that would constitute Fixed Asset Pari Passu Lien Obligations.

"*Discharge of Pari Passu Lien Obligations*" means the occurrence of all of the following: (a) termination or expiration of all commitments to extend credit that would constitute Pari Passu Lien Debt; (b) with respect to each Series of Pari Passu Lien Debt, either (i) payment in full in cash of the principal of and interest and premium (if any) on all Pari Passu Lien Debt of such Series or (ii) there has been a legal defeasance or covenant defeasance pursuant to the terms of the applicable Pari Passu Lien Documents for such Series of Pari Passu Lien Debt; (c) payment in full in cash of all other Pari Passu Lien Obligations that are outstanding and unpaid at the time the Pari Passu Lien Debt is paid in full in cash; and (d) (i) payment in full in cash of all Secured Hedging Obligations and the expiration or termination of all outstanding transactions under the Hedge Agreements or (ii) the cash collateralization of all such Secured Hedging Obligations on terms satisfactory to each applicable Hedge Bank (or other arrangements satisfactory to each such Hedge Bank shall have been made).

"*Discharge of Specified Pari Passu Lien Debt Obligations*" means that the Pari Passu Lien Obligations pursuant to the Specified Pari Passu Lien Debt Documents (other than any contingent indemnification obligations not then due) are no longer secured by, and no longer required to be secured by, the Collateral pursuant to the terms of the Specified Pari Passu Lien Debt Documents.

"*Disposition*" means, with respect to any Person, any sale, assignment (except as contemplated by any of the Pari Passu Lien Debt Documents, the Equipment Lease or the Commercial Building Loan Agreement), conveyance, sale and leaseback, transfer, lease or other disposition of any property of such Person to any other Person. "*Dispose*" has a correlative meaning.

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than for any Qualified Equity Interests or solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the maturity date of the Bonds or the date the Bonds are no longer outstanding; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company or its Subsidiaries or any Parent Company or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability; *provided*, *further* that any Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Company, any of its Subsidiaries, any Parent Company, or any other entity in which the Company or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt or Consolidated Secured Debt, as applicable, will be required to be determined pursuant to the Bond Financing Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Company.

"*Dissemination Agent*" means U.S. Bank National Association in its capacity as dissemination agent under the Continuing Disclosure Agreement.

"*Domestic Subsidiary*" means any direct or indirect Subsidiary of the Company that is organized or existing under the laws of the United States, any state thereof or the District of Columbia.

"*Electronic Means*" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services under the Bond Indenture.

"*Eligible Investments*" for purposes of the Bonds, the Bond Indenture and the Bond Financing Agreement shall mean any of the following investments, or any combination thereof, so long as such investments at the time of investment are legal investments under the laws of the State of Arkansas for the moneys proposed to be invested therein:

(a) (a) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, including State and Local Government Series ("*SLGS*") of such direct obligations; (b) obligations issued by a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or Federal Reserve Bank); and (c) securities evidencing ownership of the right to payment of specific principal or interest payments on an obligation described in (a) or (b) above, provided that such securities were created by or on behalf of the issuer of the applicable obligation and are held in the custody of a bank or trust company having a reported capital, surplus and undivided profits of at least $25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short-term category by at least one Rating Agency, in a special account separate from the general assets of such custodian ("Government Securities");

(b) Qualified Investments;

(c) unsecured certificates of deposit having maturities of not more than 365 days which are fully insured by the Federal Deposit Insurance Corporation ("*FDIC*") in one or more of the following institutions: banks, trust companies or savings and loan associations (including without limitation, the Trustee or any bank affiliated with the Trustee) organized under the laws of the United States of America or any state thereof, each bank, trust company or savings and loan association having a reported capital, surplus and undivided profits of at least $25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short-term category by at least one Rating Agency;

(d) unsecured and uninsured certificates of deposit having maturities of not more than 365 days in institutions described in clause (c) above, provided the short-term obligations of such institution are rated in the highest short-term category by at least one Rating Agency;

(e) any investment contract with a bank, trust company or savings and loan association having a reported capital, surplus and undivided profits of at least $25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short-term category by at least one Rating Agency, provided further that the investment contract shall contain a provision to the effect that such investment contract can be terminated by the Trustee without penalty in the event the rating of the institution falls below the highest short-term category by all of the Rating Agencies then rating such institution or such institution defaults on the payment of any of its obligations thereunder or to the Company, unless such investment contract is collateralized with Government Securities (as defined in clause (a) above) held by the Trustee or a third party custodian acting as agent for the Trustee with a value, marked to market no less frequently than on a weekly basis, of at least 102% of the principal amount invested under the investment contract or such rating is reinstated to the highest short-term category by at least one Rating Agency on or prior to such termination date;

(f) any share in a money market mutual fund provided such fund is (i) rated at least "A" by S&P or the equivalent by a Rating Agency or (ii) the entire investments of which are limited to investments described in clause (a) above;

(g) commercial paper rated in the highest short-term rating category by any Rating Agency;

(h) U.S. denominated deposit account, certificates of deposit and banker's acceptances of any bank, trust company, or savings and loan association, including the Trustee or their affiliates, which have a rating on their short-term certificates of deposit on the date of purchase in one of the two highest short-term rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) assigned by any Rating Agency, and which mature not more than 360 days after the date of purchase;

(i) an investment agreement, repurchase agreement or forward delivery agreement with a provider or a guarantor that has unsecured, unenhanced long-term obligations rated at least "A-" or its equivalent by one or more of the Rating Agencies at the time such agreement is entered into;

(j) certificates of deposit, bankers' acceptances or interest-bearing time deposits that are made with the Trustee or with any member of the Federal Deposit Insurance Corporation, provided that such investments are: (A) fully insured by the Federal Deposit Insurance Corporation; (B) made with any bank (including the Trustee or any Affiliate thereof) having undivided capital and surplus of at least $100,000,000, the debt obligations (or in the case of the principal bank holding company, debt obligations of the bank holding company) of which are rated in the top 2 tier categories by at least one of the recognized rating agencies at the time of purchase; or (C) continuously secured as to principal , to the extent not insured by the Federal Deposit Insurance Corporation, by items listed above, or other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States of America, having a market value (exclusive of accrued interest) not less than the amount of such deposit; and

(k) Tax-Exempt Obligations.

"EMU" means the economic and monetary union as contemplated in the Treaty on European Union.

"*Environmental Laws*" means all laws, regulations, ordinances, rules, orders, judgments, decrees, permits or other legal requirements of any governmental authority, including, without limitation, any international, foreign, national, state, provincial, regional, or local authority, relating to pollution, the protection of human health or safety relating to hazardous materials, the environment, or natural resources, or to use, handling, storage, manufacturing, transportation, treatment, discharge, disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants.

"*Environmental Permit*" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"*Equipment Lease*" means each of (i) Equipment Schedule No. 1, dated September 8, 2016, between the Equipment Lessor and the Company and (ii) Equipment Schedule No. 2, dated December 16, 2016, between the Equipment Lessor and the Company, in each case incorporating the terms of that certain Master Sub-sublease Agreement, dated as of September 8, 2016, as the same has been amended, supplemented, assigned or otherwise modified prior to August 23, 2017 and as in effect on such date and as may be further amended, supplemented, assigned or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Equipment Lease Advance*" means the sub-lease financings made by the Equipment Lessor under the Equipment Lease.

"*Equipment Lease Collateral*" means any subleased interest in equipment or real property sold to the Equipment Lessor and leased back by the Company in accordance with the Equipment Lease, in each case as described in, and as updated from time to time in accordance with, the Equipment Lease.

"*Equipment Lease Documents*" means the Equipment Lease, the Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement from the Company, as mortgagor, to the Equipment Lessor, as mortgagee, with the effective date of September 8, 2016, the Amended and Restated Recognition of Leasehold and Security Interest, Nondisturbance and Attornment Agreement made November 17, 2016 among the Company, the City of Osceola, Arkansas, the Equipment Lessor and the Commercial Building Lender, the Option Agreement, dated September 8, 2016, between the Company and the Equipment Lessor, the Amended and Restated Easement Agreement, dated as of December 16, 2016, among City of Osceola, as grantor, the Company and the Equipment Lessor, the Amended and Restated Environmental Indemnity Agreement, dated as of December 16, 2016, by the Company, Parent and the Equipment Lessor, the Continuing Guaranty, dated as of September 8, 2016, made by Parent in favor of the Equipment Lessor, the Guaranty Affirmation Letter delivered by Parent to the Equipment Lessor on December 16, 2016, and each of the other agreements, documents and instruments providing for or evidencing any Equipment Lease Obligation, and any other document or instrument executed or delivered at any time in connection with any Equipment Lease Obligations, in each case as the same has been amended, supplemented, assigned or otherwise modified prior to the Closing Date and as in effect on the Closing Date and as may be further amended, supplemented, assigned or otherwise modified from time to time hereafter to the extent not prohibited by the Intercreditor Agreement.

"*Equipment Lease Lien*" means a Lien granted, or purported to be granted, by the Company to the Equipment Lessor in the Equipment Lease Collateral to secure the Equipment Lease Obligations.

"*Equipment Lease Obligations*" means all Rent (as defined in the Equipment Lease Documents), fees, deposits, payments of stipulated loss value, late charges, reimbursement obligations and other amounts owing in connection with the Equipment Lease Advances issued under the Equipment Lease Documents.

"*Equipment Lease Proportion by Value*" means the net proceeds of a Going Concern Sale *multiplied* by the proportion of (x) $145,979,215, which is the amount of Project Costs expended by the Company to acquire and construct the Equipment Lease Collateral, *divided* by (y) $1,330,000,000, which is the total amount of Project Costs incurred by the Company as of August 23, 2017; *provided* that such amount will not exceed the total amount of the outstanding and unpaid Equipment Lease Obligations.

"*Equipment Lessor*" means SCF, as sub-sublessor under the Equipment Lease and servicer on behalf of other Persons.

"*Equity Interests*" means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

"*Equity Offering*" means any public or private sale of common equity or Preferred Stock of the Company or any Parent Company (excluding Disqualified Stock), other than:

(1) public offerings with respect to the Company's or any Parent Company's common equity registered on Form S-4 or Form S-8;

(2) issuances to any Restricted Subsidiary of the Company; and

(3) any such public or private sale that constitutes an Excluded Contribution or Capex Equity.

"*Escrowed Proceeds*" means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "*Escrowed Proceeds*" shall include any interest earned on the amounts held in escrow.

"*Euroclear*" means Euroclear Bank S.A./N.V., as operator of the Euroclear system, and its successors.

"*Euros*" means the single currency of participating member states of the EMU.

"*Event of Default*" means, with respect to the Bonds, an Event of Default as described in Section 7.01 of the Bond Indenture, with respect to the Bond Financing Agreement, an Event of Default as described in Article VII of the Bond Financing Agreement, with respect to the Senior Secured Notes, an Event of Default pursuant to the Notes Indenture and, with respect to the Term Loan Credit Agreement, an Event of Default as described therein, and with respect to an event of default under any other document or agreement, the definition given to such term therein.

"*Excess ABL Obligations*" means any Obligations that would constitute ABL Obligations if not for the ABL Cap Amount.

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

"*Excluded Account*" means any deposit or securities account now or hereafter owned by the Company or any other Grantor that is used solely by the Company or such Guarantor (a) as a payroll account so long as such payroll account is a zero balance account, (b) as a petty cash account so long as the aggregate amount on deposit in all petty cash accounts of the Company and all Guarantors does not exceed $50,000 at any one time for all such deposit accounts combined, (c) to hold amounts required to be paid in connection with workers compensation claims, unemployment insurance, social security benefits and other similar forms of governmental insurance benefits, (d) to hold amounts which are required to be pledged or otherwise provided as security as required by law or pension requirement, (e) to hold cash and cash equivalents pledged to secure Obligations under the ABL Facility consisting of reimbursement obligations in respect of letters of credit and swing line loans (and/ or any obligations of lenders participating in the facilities under which such letters of credit are issued and swing line loans made) without granting a Lien thereon to secure any other Obligations under the ABL Facility or Lenders Debt or any Pari Passu Lien Obligations, (f) to hold cash and cash equivalents pledged to the Equipment Lessor to secure Equipment Lease Obligations so long as the aggregate amount of cash and cash equivalents so pledged and on deposit in or credited to all such accounts does not exceed $6,672,335 at any one time or (g) as a withholding tax or fiduciary account.

"*Excluded Assets*" means the collective reference to:

(1) any lease, license, contract or agreement to which the Company or any other Grantor is a party, and any of its rights or interest thereunder, if and to the extent that a security interest is prohibited by or in violation of (i) any law, rule or regulation applicable to the Company or such Guarantor, or (ii) a term, provision or condition of any such lease, license, contract or agreement (unless such law, rule, regulation, term, provision or condition would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); *provided however* that the Excluded Assets shall not include (and security interest under the Security Documents shall attach) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in subclauses (i) or (ii) above; provided further that the exclusions referred to in this clause (1) of this definition shall not include any Proceeds (as defined in the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction) of any such lease, license, contract or agreement;

(2) any portion of Capital Stock that is voting Capital Stock of any Foreign Subsidiary or CFC Holdco to the extent such portion of Capital Stock represents voting power in excess of 65% of the total combined voting power of all classes of voting stock (within the meaning of Treasury Regulations section 1.956-2(c)(2)) of such Foreign Subsidiary or CFC Holdco;

(3) any "intent-to-use" application for registration of a trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law;

(4) any equity interests in, and the assets and properties of, an Excluded Subsidiary; or

(5) Excluded Accounts.

"*Excluded Capital Expenditures*" means any Capital Expenditure (whether or not required) made solely for maintenance, replacement or environmental, human health or safety or other regulatory purposes and not in connection with the incurrence of Expansion Capital Expenditures.

"*Excluded Contribution*" means net cash proceeds, the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Company from:

(1) contributions to its common equity capital;

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

(3) the sale (other than to a Restricted Subsidiary of the Company or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Company) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Company; in each case, designated as Excluded Contributions pursuant to an Officer's Certificate or that are excluded from the calculation set forth in Section 6.01(a)(3) of the Bond Financing Agreement and as described in clause (a)(3) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Limitation on Restricted Payments."

"*Excluded Subsidiary*" means (1) any Subsidiary that is not a Wholly-Owned Subsidiary of the Company or a Subsidiary Guarantor, (2) any Foreign Subsidiary, (3) any CFC Holdco, (4) any Domestic Subsidiary that is a direct or indirect Subsidiary of any CFC, (5) any Subsidiary, including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions, that is prohibited or restricted by applicable law or by contractual obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Closing Date (or, with respect to any Subsidiary acquired by the Company or a Restricted Subsidiary after the Closing Date (and so long as such contractual obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guarantee (including any Broker-Dealer Regulated Subsidiary), or if such Guarantee would require governmental (including regulatory) or third party (other than the Company or any Guarantor or their respective Subsidiaries) consent, approval, license or authorization, (6) any special purpose vehicle (or similar entity) or any Securitization Subsidiary, (7) any Captive Insurance Subsidiary, (8) any not-for-profit Subsidiary, (9) any Subsidiary that is not a Significant Subsidiary, (10) any other Subsidiary with respect to which, in the reasonable judgment of the Company, the burden or cost (including any material adverse tax consequences) of providing the Guarantee will outweigh the benefits to be obtained by the Holders therefrom and (11) each Unrestricted Subsidiary; *provided* that any such Subsidiary that is an Excluded Subsidiary pursuant to clause (9) or (10) above will cease to be an Excluded Subsidiary at any time such Subsidiary guarantees Indebtedness under the Term Loan Credit Agreement, the ABL Facility or Capital Markets Indebtedness of the Company or any other Subsidiary Guarantor.

"*Expansion Capital Expenditures*" means (i) any Capital Expenditures carried out for the purpose of increasing the earnings capacity of the Company or a Subsidiary Guarantor or (ii) any Investment in a Restricted Subsidiary made pursuant to clause (26) of the definition of "Permitted Investments;" *provided* further that Expansion Capital Expenditures shall include any Phase II Project Costs whether or not such Phase II Project Costs are considered capital expenditures in accordance with GAAP. Excluded Capital Expenditures shall be deemed not to be Expansion Capital Expenditures.

"*Extraordinary Services*" or "*Extraordinary Expenses*" means all services rendered and all reasonable expenses incurred by the Trustee under the Bond Indenture, other than Ordinary Services and Ordinary Expenses.

"*fair market value*" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Company in good faith.

"*Financial Officer*" means the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of the Company, as appropriate.

"*First Specified Pari Passu Lien Debt Threshold Date*" means the date on which the sum of (1) the outstanding principal amount of the term loans under the Specified Pari Passu Lien Debt Documents (as long as the amount of funded term loans is not less than 25% of the aggregate term loan commitments thereunder on the Initial Funding Date (but in no event unless and until the amount of funded term loans exceeds $275.0 million) plus (2) from and after the occurrence of the Initial Funding Date, the aggregate term loan commitments subject to the Specified Commitment Condition under the Specified Pari Passu Lien Debt Documents exceeds (1) 50% of the aggregate outstanding principal amount of all Pari Passu Lien Debt or (2) the aggregate outstanding principal amount of the largest Series of Pari Passu Lien Debt (other than, for purposes of this clause (2), such loans and such commitments under the Specified Pari Passu Lien Debt Documents).

"*Fixed Asset Accounts*" has the meaning ascribed to the term "Accounts" in the Deposit Agreement.

"*Fixed Asset Collateral Proceeds Account*" means a deposit or securities account which will be used solely for deposit of identifiable proceeds of Fixed Asset Priority Collateral prior to the date the Deposit Agreement becomes effective.

"*Fixed Asset General Intangibles*" means all general intangibles (including intellectual property) which are not ABL Priority Collateral.

"*Fixed Asset Mortgages*" means a collective reference to each mortgage, deed of trust and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Fixed Asset Pari Passu Lien Obligations or under which rights or remedies with respect to any such Liens are governed.

"*Fixed Asset Pari Passu Lien Claimholders*" means, at any relevant time, the holders of Fixed Asset Pari Passu Lien Obligations at that time, including the Holders, the Trustee, any other Pari Passu Lien Debt Representative (as defined in the Collateral Trust Agreement) and the other Pari Passu Lien Secured Parties and the Collateral Agent, and the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, any former Collateral Agent, Holder, Trustee and other Pari Passu Lien Debt Representative and Pari Passu Lien Secured Parties to the extent that any Obligations owing to such Persons were incurred while such Persons were Collateral Agent, Holder, Trustee, Pari Passu Lien Debt Representative or Pari Passu Lien Secured Parties, as applicable, and such Obligations have not been paid or satisfied in full.

"*Fixed Asset Pari Passu Lien Collateral Documents*" means the Collateral Trust Agreement, the "Collateral Documents" (as defined in the Term Loan Credit Agreement), the Security Documents and any other agreement, document or instrument pursuant to which a Lien is granted securing any Fixed Asset Pari Passu Lien Obligations or under which rights or remedies with respect to such Liens are governed (other than the Intercreditor Agreement).

"*Fixed Asset Pari Passu Lien Debt Documents*" means (a) the Term Loan Credit Agreement, the Notes Indenture, the Senior Secured Notes, the Bond Financing Agreement, any Specified Pari Passu Lien Debt Documents, any other indenture, notes, credit agreement or other agreement or instrument pursuant to which any Pari Passu Lien Debt (as defined in the Collateral Trust Agreement) is incurred, the Fixed Asset Pari Passu Lien Collateral Documents and the Intercreditor Agreement and (b) each of the other agreements, documents and instruments providing for or evidencing any other Fixed Asset Pari Passu Lien Obligation, and any other document or instrument executed or delivered at any time in connection with any Fixed Asset Pari Passu Lien Obligations, including any intercreditor or joinder agreement among holders of Fixed Asset Pari Passu Lien Obligations to the extent such are effective at the relevant time, as each may be amended, restated, supplemented, modified, renewed or extended, replaced or Refinanced from time to time to the extent permitted pursuant to the Intercreditor Agreement.

"*Fixed Asset Pari Passu Lien Obligations*" means:

(1) all Obligations under the Notes Indenture, the Senior Secured Notes, the Term Loan Credit Agreement, the Specified Pari Passu Lien Debt Documents and other Obligations in respect of Pari Passu Lien Debt (including Obligations under the Bond Financing Agreement and the Series 2019 Note);

(2) all Secured Hedging Obligations; and

(3) to the extent any payment with respect to any Fixed Asset Pari Passu Lien Obligation (whether by or on behalf of any Grantor, as proceeds of security, enforcement of any right of setoff or otherwise) is declared to be a fraudulent conveyance or a preference in any respect, set aside or required to be paid to a debtor in possession, any ABL Claimholders, receiver or similar Person, then the obligation or part thereof originally intended to be satisfied shall, for the purposes of the Intercreditor Agreement and the rights and obligations of the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to be reinstated and outstanding as if such payment had not occurred. To the extent that any interest, fees, expenses or other charges (including Post-Petition Interest) to be paid pursuant to the Fixed Asset Pari Passu Lien Debt Documents are disallowed by order of any court, including by order of a court of competent jurisdiction presiding over an Insolvency or Liquidation Proceeding, such interest, fees, expenses and charges (including Post-Petition Interest) shall, as between the ABL Claimholders and the Fixed Asset Pari Passu Lien Claimholders, be deemed to continue to accrue and be added to the amount to be calculated as the "Fixed Asset Pari Passu Lien Obligations." For purposes of the Bond Financing Agreement, and for the avoidance of doubt, "Fixed Asset Pari Passu Lien Obligations" includes (i) Obligations of the Company and the other Grantors under the Bond Financing Agreement or any of the Security Documents, (ii) Secured Hedging Obligations, and (iii) any Other Pari Passu Lien Obligations.

"*Fixed Asset Priority Collateral*" means the following of any Grantor: (i) Equipment (as defined in the UCC); (ii) Real Estate Assets; (iii) intellectual property; (iv) Equity Interests in all direct Subsidiaries of any Grantor; (v) intercompany indebtedness of the Company and its Subsidiaries; (vi) all other assets of any Grantor, whether real, personal or mixed (including the Revenue Account and other Fixed Asset Accounts and the Fixed Asset Collateral Proceeds Account), in each case, not constituting ABL Priority Collateral prior to the Discharge of ABL Obligations; (vii) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all documents, general intangibles, instruments, commercial tort claims, letters of credit, letter-of credit-rights and supporting obligations; provided, however, that to the extent any of the foregoing also evidence, govern, secure or otherwise reasonably relate to any ABL Priority Collateral only that portion that evidences, governs, secures or reasonably relates to Fixed Asset Priority Collateral shall constitute Fixed Asset Priority Collateral; (viii) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); (ix) insurance and claims against third parties to the extent arising on account of Fixed Asset Priority Collateral (excluding, however, the proceeds of and payments under all policies of business interruption insurance); and (x) all proceeds and products of any or all of the foregoing in whatever form received, but excluding any property that is directly acquired prior to the commencement of any case or proceeding under the Bankruptcy Code or any similar Bankruptcy Law with cash proceeds of any Fixed Asset Priority Collateral and does not otherwise constitute Fixed Asset Priority Collateral upon its acquisition. Subject to certain provisions of the Intercreditor Agreement, upon a Discharge of ABL Obligations, all ABL Priority Collateral shall become Fixed Asset Priority Collateral.

"*Fixed Charge Coverage Ratio*" means, with respect to any Test Period, the ratio of (1) Consolidated EBITDA of the Company for such Test Period to (2) the Fixed Charges of the Company and its Restricted Subsidiaries for such Test Period. In the event that the Company or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock or establishes or eliminates any Designated Revolving Commitments, in each case, subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Fixed Charge Coverage Ratio Calculation Date*"), then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the most recently ended Test Period (and (1) for the purposes of the numerator of the Total Net Leverage Ratio and the Senior Secured Net Leverage Ratio, as if the same had occurred on the last day of the most recently ended Test Period and (2) for all purposes, as if Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period); *provided*, *however*, that at the election of the Company, the *pro forma* calculation will not give effect to any Indebtedness incurred or Disqualified Stock or Preferred Stock issued on the Fixed Charge Coverage Ratio Calculation Date pursuant Section 6.03(b) of the Bond Financing Agreement (other than clause (15) thereof or Indebtedness secured pursuant to clause (4) of the definition of Permitted Liens in the case of the Senior Secured Net Leverage Ratio) and as described in the second paragraph (other than clause (15) thereof or Indebtedness secured pursuant to clause (4) of the definition of Permitted Liens in the case of the Senior Secured Net Leverage Ratio) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of Borrower— Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock." For purposes of making the computation referred to above, any Specified Transaction that has been consummated by the Company or any Restricted Subsidiary during any Test Period or subsequent to such Test Period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date will be calculated on a *pro forma* basis assuming that all such Specified Transactions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Test Period. If since the beginning of such Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Company or any Restricted Subsidiary since the beginning of such Test Period will have made any Specified Transaction that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect thereto for such Test Period as if such Specified Transaction had occurred at the beginning of the most recently ended Test Period. For purposes of this definition in the Bond Financing Agreement, whenever *pro forma* effect is to be given to any Specified Transaction, the *pro forma* calculations will be made in good faith by a Financial Officer of the Company and may include, for the avoidance of doubt, the amount of "run-rate" cost savings, operating expense reductions and synergies projected by the Company in good faith to result from or relating to any Specified Transaction which is being given *pro forma effect* that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Company) no later than twenty four (24) months after the date of any such Specified Transaction (in each case as though such cost savings, operating expense reductions and synergies had been realized on the first day of the applicable period and as if such cost savings, operating expense reductions and synergies were realized for the entirety of such period). For the purposes of the Bond Financing Agreement, "*run-rate*" means the full recurring benefit for a period that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target's compliance costs with public company requirements), net of the amount of actual benefits realized during such period from such actions. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness will be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, will be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

"*Fixed Charge Coverage Ratio Calculation Date*" has the meaning ascribed to such term in the definition of "Fixed Charge Coverage Ratio."

"*Fixed Charges*" means, with respect to any Person for any period, the sum of, without duplication:

(1) Consolidated Interest Expense of such Person for such period;

(2) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and

(3) all cash dividends or other cash distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

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

"*Funded Debt*" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(1) in respect of borrowed money or advances; or

(2) evidenced by indentures, bonds, notes, debentures, loan agreements or similar instruments. For the avoidance of doubt, "Funded Debt" shall not include Secured Hedging Obligations.

"*GAAP*" means generally accepted accounting principles in the United States of America 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 have been approved by a significant segment of the accounting profession, as in effect from time to time. Notwithstanding any other provision contained herein, (i) the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any of the Company's Subsidiaries at "fair value," as defined therein.

"Going Concern" means that the Project facility is producing any commercially saleable product and capable of operating as a going concern, as determined in the reasonable discretion of the Controlling Representative.

"Going Concern Buyer" means any purchaser, or potential purchaser, of the Project, that is not an Affiliate of any Grantor, and that intends, as determined in good faith by the Controlling Representative, to continue to operate the Project as a Going Concern following the completion of the sale to it of Project assets or the Capital Stock of the Company.

"Going Concern Collateral" means all of the Collateral except for the ABL Priority Collateral, and in any event including the Equipment Lease Collateral and the Commercial Building Collateral.

"Going Concern Sale" means the sale of the Project (whether through a sale of the Project assets or the sale of the Company's Capital Stock) to a Going Concern Buyer.

"*Governmental Authority*" means the government of the United States or any other nation, or of any political subdivision thereof, whether state, local, or otherwise, 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).

"*Government Securities*" has the meaning given to such term in the definition of "Eligible Investments."

"*Grantor*" means, for the purposes of the Collateral Trust Agreement or the Intercreditor Agreement, the Company, Parent, the Guarantors and any other Person (if any) that at any time provides collateral security for any Pari Passu Lien Obligations, Equipment Lease Obligations or Commercial Building Lender Obligations; and, for the purposes of the Bond Financing Agreement means the Company, Parent and any other Guarantor.

"*guarantee*" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"*Guarantee*" means the guarantee by any Person of the Company's Obligations under the Bond Financing Agreement and the Series 2019 Note.

"*Guarantor*" means Parent (or any successor thereof) and the Subsidiary Guarantors.

"*Hazardous Materials*" means all explosive or radioactive substances or wastes, and all other substances, wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos- containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

"*Hedge Agreement*" means any agreement governing Hedging Obligations; *provided* that the counterparty thereto has delivered a Collateral Trust Joinder in respect thereof under the Collateral Trust Agreement. The term "Hedge Agreement" shall include both any "master agreement" and any related transaction and the related confirmations that are subject to the terms and conditions of, or governed by, any Hedge Agreement; it being understood and agreed that a Collateral Trust Joinder shall only be required once for each master agreement and shall not be required for each individual transaction or confirmation thereunder.

"*Hedge Bank*" means any Person that is an Agent, a Lender, an Arranger (as each such term is defined in the Term Loan Credit Agreement) or an Affiliate of any of the foregoing that delivers a Collateral Trust Joinder, whether or not such Person subsequently ceases to be an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing.

"*Hedging Obligations*" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer, modification or mitigation of interest rate, currency, commodity risks or equity risks either generally or under specific contingencies. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

"*Immediate Family Members*" means with respect to any individual, such individual's child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in- law, father-in-law, son-in-law and daughter- in-law (including, in each case, adoptive relationships) and any trust, partnership or other *bona fide* estate planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

"*Incur*" means issue, assume, enter into any guarantee of, incur or otherwise become liable for and the terms "*Incurs*", "*Incurred*" and "*Incurrence*" shall have a correlative meaning.

"*Incremental Amounts*" has the meaning assigned to such term in the definition of "*Refinancing Indebtedness.*"

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

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent: (a) in respect of borrowed money; (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof); (c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations and Sale and Lease-Back Transactions other than Specified Sale and Lease-Back Transactions) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice and (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable; (d) representing the net obligations under any Hedging Obligations; or (e) Attributable Indebtedness; if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided* that Indebtedness of any Parent Company appearing upon the balance sheet of the Company solely by reason of push-down accounting under GAAP will be excluded;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided* that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person; *provided* that notwithstanding the foregoing, Indebtedness will be deemed not to include (a) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice (including any Contingent Obligations issued in connection with operating licenses or permits), (b) reimbursement obligations under commercial letters of credit (provided that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn), (c) obligations under or in respect of Qualified Securitization Facilities; (d) accruals for payroll and other liabilities accrued in the ordinary course of business, and those accrued in connection with the Management Services Agreements, (e) deferred or prepaid revenues, (f) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care) and (g) obligations in connection with a Specified Sale and Lease-Back Transaction; *provided*, *further* that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, Derivatives and Hedging, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under the Bond Financing Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"*Independent Assets or Operations*" means, with respect to any Parent Company, that Parent Company's total assets, revenues, income from continuing operations before income taxes and cash flows from operating activities (excluding in each case amounts related to its investment in the Company and the Restricted Subsidiaries), determined in accordance with GAAP and as shown on the most recent balance sheet of such Parent Company, is more than 3.00% of such Parent Company's corresponding consolidated amount.

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

"*Indirect Participant*" means a Person utilizing the Book-Entry System of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

"*Initial Funding Date*" means the first date on which both (a) the initial advance(s) of term loans has been made under the Specified Pari Passu Lien Debt Documents and (b) the only conditions to further advances of term loans under the Specified Pari Passu Lien Debt Documents are conditions precedent substantially similar to the conditions precedent set forth in the Original KfW Credit Agreement (such condition, the "*Specified Commitment Condition*").

"*Insolvency or Liquidation Proceeding*" means (a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to the Company or any other Grantor, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to the Company or any other Grantor or with respect to any of its assets, (c) any liquidation, dissolution, reorganization or winding up of the Company or any other Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of the Company or any other Grantor.

"*Intercreditor Agreement*" means that intercreditor agreement dated as of August 23, 2017 by the Collateral Agent, on its own behalf and on behalf of the Trustee, the trustee for the Senior Secured Notes, the holders of the Senior Secured Notes, the Bondholders and other Secured Parties, and the ABL Agent, on its own behalf and on behalf of the lenders under the ABL Facility and any other Lenders Debt (together with the Collateral Agent, the "Applicable Collateral Agents"), the Equipment Lessor, the Commercial Building Lender, the Company and the other Grantors, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"*Interest Account*" means the account of that name established in the Debt Service Fund pursuant to Section 5.01(a) of the Bond Indenture.

"*Interest Payment Date*" or "*Interest Payment Dates*" means, with respect to the 2019 Bonds, each March 1 and September 1 commencing September 1, 2019.

"*Inventory*" has the meaning given to such term in Article 9 of the UCC.

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

"*Investment Grade Securities*" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Company and its Subsidiaries;

(3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"*Investments*" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice) or purchases or sales or other dispositions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definitions of "Permitted Investments" and "Unrestricted Subsidiary" and the covenant contained in Section 6.01 of the Bond Financing Agreement and described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments;" (1) "Investments" will include the portion (proportionate to the Company's Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Company at the time that such Subsidiary is designated an Unrestricted Subsidiary; *provided* that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to: (a) the Company's "Investment" in such Subsidiary at the time of such redesignation; *minus* (b) the portion (proportionate to the Company's Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation; and (2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer. The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Company or a Restricted Subsidiary in respect of such Investment.

"*Investor*" means any of Koch Industries, Inc., TPG Capital, L.P., Arkansas Teacher Retirement System, Global Principal Partners LLC any of their respective Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

"*Laws*" means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"*Legal Holiday*" means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

"*Lenders Debt*" means all (i) Indebtedness outstanding from time to time under the ABL Facility (including all principal, interest, fees, costs and expenses thereunder), (ii) any Indebtedness which has a priority security interest relative to the Obligations under the Bond Financing Agreement in the ABL Priority Collateral pursuant to the Intercreditor Agreement, (iii) all Obligations with respect to such Indebtedness and any Hedging Obligations directly related to any Lenders Debt and (iv) all Obligations incurred with the ABL Facility Lenders (or their affiliates) in connection with the delivery of cash management and related services and other commercial bank products as described in the ABL Facility.

"Lender Representative" means each Pari Passu Lien Debt Representative, acting on behalf of the Pari Passu Lien Secured Parties represented by such Pari Passu Lien Debt Representative, the Equipment Lessor (acting on its own behalf and as servicer for certain other Persons) and the Commercial Building Lender (acting on its own behalf).

"*Letter of Representations*" means the Blanket Issuer Letter of Representations dated July 24, 1995 filed by the Issuer and accepted by the Depository.

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

"*Limited Offering Memorandum*" means the Limited Offering Memorandum (in printed or electronic form) with respect to the 2019 Bonds, dated as of May 21, 2019, and any amendments or supplements thereto that shall be approved by the Bond Issuer and the Company, in connection with the limited public offering and sale of the 2019 Bonds.

"*Majority Holders*" means, with respect to any Series of Pari Passu Lien Debt, the holders of more than 50% of the aggregate outstanding principal amount (and, if applicable, the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) in respect thereof.

"*Management Services Agreements*" means any management services agreement, bonus agreement or similar agreements among one or more of the Investors or Management Stockholders or certain of their respective management companies or Affiliates thereof associated with it or their advisors, if applicable, and the Company (and/or any Parent Company) or any amendment thereto or renewal or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Holders when taken as a whole, as compared to the Management Services Agreements as in effect on the Closing Date.

"*Management Stockholders*" means the members of management (and their Controlled Investment Affiliates and Immediate Family Members and any permitted transferees thereof) of the Company (or a Parent Company) who are holders of Equity Interests of any Parent Company on the Closing Date.

"*Margin Stock*" has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"*Market Capitalization*" means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Company or the applicable Parent Company, as applicable, on the date of the declaration of a Restricted Payment permitted pursuant to Section 6.01(b)(8) of the Bond Financing Agreement and clause (b)(8) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments" multiplied by (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

"*Material Adverse Effect*" means any material adverse change, or any development involving a prospective material adverse change, whether or not arising from transactions in the ordinary course of business, in or affecting (i) the business, properties, general affairs, management, financial position, stockholders' equity or results of operations of the Company, the Guarantors and their Subsidiaries, taken as a whole, or (ii) the ability of the Company or any Guarantor to perform in all material respects its obligations under the Borrower Documents, the Existing Debt Documents, the Guarantees or the Collateral Documents.

"*Material Real Property*" means any fee-owned real property owned by the Company or leasehold interest of the Company in real property, in each case, located in the United States and with a fair market value in excess of $10.0 million on the Closing Date (if owned or leased by the Company on the Closing Date) or at the time of acquisition (if acquired by the Company after the Closing Date).

"*Maximum Rate*" means, with respect to the 2019 Bonds, the lesser of 15% per annum or the maximum interest rate permitted by applicable Arkansas law.

"*Money Laundering Laws*" means anti-money laundering laws, including, but not limited to, the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and the anti-money laundering laws of the various jurisdictions in which any such party or its subsidiaries conduct business.

"*Mortgaged Property"* means any real property subject to a deed of trust or mortgage.

"*Mortgages*" means the mortgages, debentures, hypothecs, deeds of trust, deeds to secure Indebtedness or other similar documents securing Liens on the owned real property or leased real property that is to form a portion of the Collateral.

"*Mortgaged Premises*" means any real property which shall now or hereafter be subject to a mortgage.

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

"*Net Cash Proceeds,*" with respect to any issuance or sale of Capital Stock, means the cash proceeds of such issuance or sale, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

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

"*Net Proceeds*" means the aggregate cash and Cash Equivalents received by the Company or any Restricted Subsidiary in respect of any Asset Sale, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Company or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Company or any Restricted Subsidiary, in either case in respect of such Asset Sale, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under the Bond Financing Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Subordinated Indebtedness) or amounts required to be applied to the repayments of Indebtedness secured by a Lien on such assets and required (other than required by Section 6.04(b)(1) of the Bond Financing Agreement and clause (b)(1) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Asset Sales") to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Company or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"*Non-Recourse Indebtedness*" means Indebtedness that is non-recourse to the Company and the Restricted Subsidiaries.

"*Notes Indenture*" means the Indenture dated as of August 23, 2017 among the Company, as issuer, BRS Finance Corp., as co-issuer, the Parent, each guarantor that may become a party thereto, and U.S. Bank National Association, as trustee and collateral agent, relating to 7.250% Senior Secured Notes due 2025.

"*Obligations*" means any principal, interest (including any interest accruing on or 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 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.

"*OECD*" means the Organisation for Economic Co-Operation and Development.

"*OECD Rules*" means the OECD Arrangement on Guidelines for Officially Supported Export Credits (TAD/ECG (2017) 1) dated February 1, 2017, as amended from time to time.

"*Officer*" means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of any Person. Unless otherwise indicated, Officer shall refer to an officer of the Company.

"*Officer's Certificate*" means a certificate signed on behalf of a Person by an Officer of such Person that meets the requirements set forth in the Bond Financing Agreement.

"*ordinary course of business*" means activity conducted in the ordinary course of business of the Company and any Restricted Subsidiary.

"*Ordinary Services*" or "*Ordinary Expenses*" means those standard and customary services normally rendered, and those reasonable expenses normally incurred, by a trustee under instruments similar to the Bond Indenture and the Bond Financing Agreement.

"*Original KfW Credit Agreement*" means that certain Senior Facilities Agreement, dated as of June 27, 2014 (as amended, supplemented or modified from time to time on or prior to August 23, 2017) among the Company, the guarantors party thereto, KfW IPEX-Bank GmbH, as the lead arranger and the and the other lenders party hereto, KfW IPEX-Bank GmbH, as administrative agent, and Deutsche Bank Trust Issuer Americas, as collateral agent.

"*Other Pari Passu Lien Obligations*" means (a) all outstanding Indebtedness under the Notes Indenture, the Senior Secured Notes, and the Term Loan Credit Agreement, (b) Funded Debt incurred under Specified Pari Passu Lien Debt Documents, and (c) any other Indebtedness that is permitted to be secured on a pari passu basis with the Liens securing the Obligations under the Bond Financing Agreement and the Series 2019 Note, by the Collateral and not by any other assets; *provided*, *however*, that a representative or agent with respect to such Indebtedness described in this clause (c) is a Pari Passu Lien Debt Representative under the Collateral Trust Agreement and such Indebtedness is Additional Pari Passu Lien Debt.

"*Other Pari Passu Lien Obligations Debt Limit*" means, as at any time of determination, $400 million *plus* an amount equal to the product of (x) the aggregate amount of Capex Equity received since the Closing Date through and including such time of determination multiplied by (y) two.

"*Outstanding*", "*Outstanding Bonds*" or "*Bonds outstanding*" means, as of the applicable date, all Bonds which have been authenticated and delivered, except:

(a) Bonds canceled or required to be canceled pursuant to the provisions of the Bond Indenture upon surrender, exchange or transfer, or canceled or required to be canceled pursuant to the provisions of the Bond Indenture because of payment or redemption on or prior to that date;

(b) On and after the applicable payment, redemption or purchase date, Bonds, or the portion thereof, for the payment, redemption or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee or any Paying Agent pursuant to the Bond Indenture for the purpose of extinguishing the applicable debt; provided, that, in the case of the redemption or purchase of the applicable Bonds, notice of such redemption or purchase shall have been given as required under the Bond Indenture;

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of the Bond Indenture;

(d) Bonds paid pursuant to Section 3.07 of the Bond Indenture; and

(e) Bonds in lieu of which others have been authenticated pursuant to the Bond Indenture; provided that, in determining whether the Holders of the requisite percentage of Bonds have concurred in any demand, direction, request, notice, consent, waiver or other action under the Bond Indenture, Bonds that are owned by the Company or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination (unless all of the Bonds are so owned); provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only such Bonds of which the Trustee has actual knowledge are so owned shall be disregarded. Bonds so owned that have been pledged in good faith may be regarded as Outstanding for such purpose, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

"*Outstanding Term Loan Threshold Date*" means the date on which both (x) the outstanding principal amount of Term Loan under (and as defined in) the Term Loan Credit Agreement (or the aggregate outstanding principal amount of all loans and other evidences of indebtedness in respect thereof under any replacement Term Loan Credit Agreement designated as such in accordance with the Collateral Trust Agreement) is less than 15% of the aggregate outstanding principal amount (and the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) of all Pari Passu Lien Debt and (y) the aggregate outstanding principal amount (and the unused commitments under the Specified Pari Passu Lien Debt Documents, subject to the Specified Commitment Condition) of another Series of Pari Passu Lien Debt exceeds the outstanding principal amount of Term Loans under the Term Loan Credit Agreement.

"Parent" means BRS Intermediate Holdings LLC, a Delaware limited liability company.

"*Parent Company*" means any Person that is a direct or indirect parent (which may be organized as, among other things, a partnership) of the Company.

"*Parent Guarantee*" means a Guarantee of Parent and it successors.

"*Pari Passu Indebtedness*" means:

(1) with respect to the Company, the Obligations under the Bond Financing Agreement and the Series 2019 Note and any Indebtedness which ranks pari passu in right of payment thereto; and

(2) with respect to any Guarantor, its Guarantee and any Indebtedness which ranks pari passu in right of payment to such Guarantor's Guarantee.

"*Pari Passu Lien*" means a Lien granted, or purported to be granted, by a Pari Passu Lien Security Document to the Collateral Agent, at any time, upon any property of the Company or any other Grantor to secure Pari Passu Lien Obligations.

"*Pari Passu Lien Debt*" means: (a) any Funded Debt now or hereafter incurred under the Term Loan Credit Agreement; (b)(i) the Obligations under the Bond Financing Agreement and the Series 2019 Note (and amendments or supplements thereto of additional note delivered in connection with the issuance of any Additional Bonds) and any Senior Secured Notes issued on August 23, 2017 and any senior secured notes issued under the Notes Indenture (or a supplemental indenture thereto) in exchange for the Senior Secured Notes and (ii) any additional Senior Secured Notes issued under the Notes Indenture (or a supplemental indenture thereto) from time to time and any Senior Secured Notes issued under the Notes Indenture in exchange for such additional senior secured notes; (c) any other Funded Debt (including, without limitation (x) Funded Debt incurred under any replacement Notes Indenture, (y) Funded Debt incurred under Specified Pari Passu Lien Debt Documents or (z) borrowings under any other Pari Passu Lien Debt Documents) that is secured by a Pari Passu Lien and that was permitted to be incurred and permitted to be so secured under each applicable Pari Passu Lien Debt Document; provided, in the case of any Funded Debt referred to in this clause (c), that: (i) on or before the date on which such Funded Debt is incurred by the Company or by another Grantor, such Funded Debt is designated by the Company as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement; (ii) unless such Funded Debt is issued under an existing Pari Passu Lien Debt Document for any Series of Pari Passu Lien Debt whose Pari Passu Lien Debt Representative is already party to the Collateral Trust Agreement, the Pari Passu Lien Debt Representative for such Funded Debt executes and delivers a Collateral Trust Joinder in accordance with the Collateral Trust Agreement; and (iii) all other requirements for the Additional Pari Passu Lien Obligations Debt Designations set forth in the Collateral Trust Agreement have been complied with. For the avoidance of doubt, (i) Secured Hedging Obligations do not constitute Pari Passu Lien Debt but may constitute Pari Passu Lien Obligations and (ii) Equipment Lease Obligations and Commercial Building Lender Obligations do not constitute Pari Passu Lien Debt.

"*Pari Passu Lien Debt Default*" means any event or condition that, under the terms of any indenture, credit agreement or other agreement governing any Series of Pari Passu Lien Debt causes, or permits holders of Pari Passu Lien Debt outstanding thereunder (with or without the giving of notice or lapse of time, or both, and whether or not notice has been given or time has lapsed) to cause, the Pari Passu Lien Debt outstanding thereunder to become immediately due and payable.

"*Pari Passu Lien Debt Documents*" means the Bond Financing Agreement, the Notes Indenture, the Term Loan Credit Agreement and any other indenture, notes, credit agreement or other agreement or instrument pursuant to which any Pari Passu Lien Debt is incurred (including, without limitation, the Specified Pari Passu Lien Debt Documents) and the Pari Passu Lien Security Documents.

"*Pari Passu Lien Debt Proportion by Value*" means (x) the net proceeds of a Going Concern Sale *minus* (y) the sum of the Equipment Lease Proportion by Value *plus* the Commercial Building Loan Proportion by Value, *provided* that such amount will not exceed the total amount of the outstanding and unpaid Pari Passu Lien Obligations.

"*Pari Passu Lien Debt Representative*" means:

(1) in the case of the Bond Financing Agreement, the Trustee (as assignee of the Bond Issuer);

(2) in the case of the Notes Indenture, the trustee for the Senior Secured Notes and, in the case of the Term Loan Credit Agreement, the Term Loan Administrative Agent;

(3) in the case of the Specified Pari Passu Lien Debt Documents, the Specified Pari Passu Lien Debt Representative;

(4) in the case of any other Series of Pari Passu Lien Debt, the trustee, agent or representative of the holders of such Series of Pari Passu Lien Debt who maintains the transfer register for such Series of Pari Passu Lien Debt or is appointed as a representative of the Pari Passu Lien Debt (for purposes related to the administration of the Pari Passu Lien Security Documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Pari Passu Lien Debt, and who has executed a Collateral Trust Joinder; and

(5) in the case of any Secured Hedging Obligations owing to a Hedge Bank, such Hedge Bank.

"*Pari Passu Lien Obligations*" means the Pari Passu Lien Debt and all other Obligations in respect of Pari Passu Lien Debt, together with Secured Hedging Obligations, including any Post-Petition Interest whether or not allowable, and all guarantees of any of the foregoing. In addition to the foregoing, all obligations owing to the Collateral Agent in its capacity as such, whether pursuant to the Collateral Trust Agreement or one or more of the Pari Passu Lien Debt Documents, shall in each case be deemed to constitute Pari Passu Lien Obligations (with the obligations described in this sentence being herein the "Collateral Agent Obligations"), which Collateral Agent Obligations shall be entitled to the priority provided in clause FIRST under "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—Collateral Trust Agreement— Order of Application." For the avoidance of doubt, Equipment Lease Obligations and Commercial Building Lender Obligations do not constitute Pari Passu Lien Obligations.

"*Pari Passu Lien Secured Parties*" means the holders of Pari Passu Lien Obligations, each Pari Passu Lien Debt Representative and the Collateral Agent.

"*Pari Passu Lien Security Documents*" means all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements, control agreements, consent or direct arrangements (including any Direct Agreements), or other grants or transfers for security executed and delivered by the Company or any other Grantor creating or perfecting (or purporting to create or perfect) or governing rights of enforcement with respect to, a Lien upon Collateral in favor of the Collateral Agent, for the benefit of any of the Pari Passu Lien Secured Parties, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms of the Intercreditor Agreement and as described under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—*Intercreditor Agreement—Amendment of Pari Passu Lien Security* Documents."

"*Paying Agent*" means any bank or trust company designated as a Paying Agent by or in accordance with Section 6.12 of the Bonds Indenture.

"*Permitted Asset Swap*" means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Company or any Restricted Subsidiary and another Person; *provided* that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company— Asset Sales."

"*Permitted Bond Hedge Transaction*" means any call or capped call option (or substantially equivalent derivative transaction) on the Company's common stock purchased by the Company in connection with the issuance of any Convertible Indebtedness; *provided* that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Company from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Company from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

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

"*Permitted Holder*" means (1) any of the Investors, Management Stockholders and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) of which any of the foregoing are members; *provided* that in the case of any such group and without giving effect to the existence of such group or any other group, such Investors and Management Stockholders, collectively, have, directly or indirectly, beneficial ownership of more than 50.0% of the total voting power of the Voting Stock of the Company and (2) any Person acting in the capacity of an underwriter (solely to the extent that and for so long as such Person is acting in such capacity) in connection with a public or private offering of Capital Stock of the Company or any Parent Company. Any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which any required Change of Control Offer is made in accordance with the requirements of the Bond Financing Agreement (or would have required a Change of Control Offer in the absence of the waiver of such requirement by Holders in accordance with the provisions of the Bond Financing Agreement) will thereafter, together with its Affiliates, constitute an additional Permitted Holder.

"*Permitted Investments*" means:

(1) any Investment in the Company or any Guarantor (including guarantees of obligations of the Guarantors);

(2) any Investment in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) any Investment by the Company or any Restricted Subsidiary in a Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business, or in a business unit, line of business or division of such Person, if as a result of such Investment: (a) such Person becomes a Restricted Subsidiary (and in the event such Investment was made by the Company or a Guarantor, becomes a Guarantor); or (b) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting such business unit, line of business or division in which such Investment was made, as applicable, to, or is liquidated into, the Company or a Restricted Subsidiary (and in the event such Investment was made by the Company or a Guarantor, such amalgamation, merger, consolidation, transfer or conveyance is made to a Guarantor); and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale permitted pursuant to Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Asset Sales" or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on such date or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on such date; *provided* that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on such date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted under the Bond Financing Agreement;

(6) any Investment by the Company or any Restricted Subsidiary: (a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Company or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer); (b) in satisfaction of judgments against other Persons; (c) as a result of a foreclosure by the Company or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or (d) as a result of the settlement, compromise or resolution of (A) litigation, arbitration or other disputes or (B) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Company or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(7) Hedging Obligations permitted under Section 6.03(b)(11) of the Bond Financing Agreement and in clause (11) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement— Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock"

(8) any Investment in a Similar Business, taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (a) $80 million and (b) 50% of Consolidated EBITDA of the Company and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

(9) Investments the payment for which consists of, or are funded by the sale of, Equity Interests (other than Disqualified Stock) of the Company or any Parent Company or are funded from cash equity contributions to the capital of the Company; *provided* that such Equity Interests, the proceeds from the sale of any such Equity Interests, and such contributions to the capital of the Company, will not increase the amount available for Restricted Payments under Section 6.01(a)(3) of the Bond Financing Agreement and clause (a)(3) of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments;"

(10) (a) guarantees of Indebtedness permitted under Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice and (b) the creation of Liens on the assets of the Company or any Restricted Subsidiary in compliance with Section 6.06 of the Bond Financing Agreement as described in "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Liens;"

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 6.05(b) of the Bond Financing Agreement (except transaction described in clauses (2), (6), (10), (16) and (23) thereof) and of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Transactions with Affiliates" (except transactions described in clause (b)(2), (b)(6), (b)(10), (b)(16) or (b)(23) of such covenant);

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

(13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (a) $80 million and (b) 50% of Consolidated EBITDA of the Company determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Company, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation in connection therewith (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Company or any Restricted Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, members of management and independent contractors not in excess of $2.0 million outstanding at any one time, in the aggregate;

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, including pursuant to Management Services Agreements, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates and Immediate Family Members) to fund such Person's purchase of Equity Interests of the Company or any Parent Company;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Company or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Company or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;

(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (a) $40 million and (b) 30% of Consolidated EBITDA of the Company and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a *pro forma* basis);

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

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Company or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(26) any Investment, constituting Indebtedness, by the Company or a Subsidiary Guarantor, in a Restricted Subsidiary that is not a Wholly-Owned Subsidiary of the Company or such Guarantor, the net proceeds of which are used by such Restricted Subsidiary to make any Capital Expenditures for the purpose of increasing the earnings capacity in such Restricted Subsidiary, in a Similar Business; *provided* that (i) such Investment is secured by a first priority Lien on all of the assets and property of such Restricted Subsidiary that would constitute Fixed Asset Priority Collateral if such property or assets were Collateral (prior to all Liens on such assets and property that would constitute ABL Priority Collateral if such assets and property were Collateral), (ii) such Investment is collaterally assigned in favor of the Collateral Agent as Fixed Asset Priority Collateral and (iii) the assets and property of such Restricted Subsidiary (other than assets and property that would constitute ABL Priority Collateral if such assets and property were Collateral) are not otherwise subject to any Lien other than Permitted Restricted Subsidiary Liens;

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Company and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of any Parent Company, the Company or any Subsidiary of the Company in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Company or any direct or indirect parent of the Company, to the extent no cash is actually advanced by the Company or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens;"

(31) loans and advances to any direct or indirect parent of the Company in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with the covenant contained in Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT— Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments" at such time, such Investment being treated for purposes of the applicable clause of such covenant in Section 6.01 of the Bond Financing Agreement or the corresponding section of the Limited Offering Memorandum, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause;

(32) any other Investments if on a *pro forma* basis after giving effect to such Investment, the Total Net Leverage Ratio would be equal to or less than 3.00 to 1.00 as of the last day of the Test Period most recently ended;

(33) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Asset Sales;" and

(34) Permitted Bond Hedge Transactions.

For purposes of determining compliance with this definition, (A) an Investment need not be incurred solely by reference to one category of Permitted Investments described in this definition but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that an Investment (or any portion thereof) meets the criteria of one or more of the categories of Permitted Investments, the Company will, in its sole discretion, classify or reclassify such Investment (or any portion thereof) in any manner that complies with this definition and with Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement— Covenants of the Company—Limitation on Restricted Payments."

"*Permitted Liens*" means, with respect to any Person:

(1) Liens securing Obligations in respect of the Bond Financing Agreement and Series 2019 Note, the Senior Secured Notes and any guarantees thereof and the Guarantees;

(2) Liens securing Obligations in respect of Indebtedness permitted to be incurred under any Credit Facility, including any letter of credit facility relating thereto, that was permitted by the terms of Section 6.03(b)(1) of the Bond Financing Agreement and clause (1) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" provided that any such Lien will be subject to the Intercreditor Agreement, as required therein;

(3) Liens securing Other Pari Passu Lien Obligations permitted to be incurred pursuant to Section 6.03(b)(2) of the Bond Financing Agreement and clause (2) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" provided that any such Lien will be subject to the Collateral Trust Agreement and the Intercreditor Agreement, as required therein;

(4) Liens securing Pari Passu Lien Obligations in respect of Indebtedness permitted to be incurred under Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" provided that at the time of incurrence (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving pro forma effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time-to-time, without further compliance with this subclause) and after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Company's Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred would not exceed 3.00 to 1.00; *provided* that any such Lien will be subject to the Collateral Trust Agreement and the Intercreditor Agreement, as required therein;

(5) Liens, pledges or deposits by such Person made in connection with (A) workers' compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations, (B) insurance-related obligations (including, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance, or otherwise supporting the payment of items set forth in the foregoing clause (A), or (C) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers' acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness), or deposits to secure public or statutory obligations of such Person or deposits of cash, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;

(6) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, construction and mechanics' Liens and other similar Liens, or similar landlord Liens specifically created by contract, and (i) for sums not yet overdue for a period of more than 60 days or, if more than 60 days overdue, are unfiled and no other action has been taken to enforce such Liens or (ii) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(7) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

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

(9) survey exceptions, encumbrances, covenants, conditions, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television 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 or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person;

(10) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to Section 6.03(b), clauses (5), (7), (14), (15) or (16) of the Bond Financing Agreement and as described in clauses (5), (7), (14), (15) or (16) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" *provided* that: (a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred or issued pursuant to Section 6.03(b)(14) of the Bond Financing Agreement and clause (14) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), plus improvements, accessions, proceeds or dividends or distributions in respect thereof and After-Acquired Property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness incurred under Section 6.03(b)(5) or (14) of the Bond Financing Agreement and clause (5) or (14) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," (b) [Reserved], (c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to Section 6.03(b)(5) of the Bond Financing Agreement and clause (5) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" extend only to the assets so purchased, constructed, replaced, leased or improved and proceeds and products thereof; *provided, further* that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty, (d) Liens securing Obligations in respect of Indebtedness permitted to be incurred pursuant to Section 6.03(b)(15)(b) of the Bond Financing Agreement and clause (15)(b) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock" are solely on acquired property or the assets of the acquired entity, and (e) Liens securing Obligations in respect of Indebtedness permitted to be incurred pursuant to Section 6.03(b)(15) of the Bond Financing Agreement and clause (15) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," after giving *pro forma* effect to such Indebtedness secured by such Lien and the application of the net proceeds therefrom, the Company's Senior Secured Net Leverage Ratio for the most recently ended Test Period preceding the date on which such additional Indebtedness is incurred after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, would (a) be no less than the Senior Secured Net Leverage Ratio immediately prior to giving effect to such incurrence of Indebtedness secured by such Lien or (b) not exceed 3.00 to 1.00;

(11) Liens existing, or provided for under binding contracts existing, on the Closing Date (other than Liens securing Obligations under the Term Loan Credit Agreement, the ABL Facility or to secure the Senior Secured Notes and related guarantees, the Obligations under the Bond Financing Agreement and related Guarantees);

(12) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary); and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by the Bond Financing Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(13) Liens on property or other assets at the time the Company or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Company or any Restricted Subsidiary (*provided* that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by the Bond Financing Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(14) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or another Restricted Subsidiary permitted to be incurred in accordance with Section 6.03 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;"

(15) Liens securing (x) Hedging Obligations and (y) obligations in respect of Cash Management Services;

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

(17) leases, subleases, licenses or sublicenses (or other agreement under which the Company or any Restricted Subsidiary has granted rights to end users to access and use the Company's or any Restricted Subsidiary's products, technologies or services) that do not either (a) materially interfere with the business of the Company and its Restricted Subsidiaries, taken as a whole, or (b) secure any Indebtedness;

(18) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Company and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(19) Liens in favor of the Company or any Guarantor;

(20) Liens on equipment or vehicles of the Company or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(21) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility and Liens on any receivables transferred in connection with a Receivables Financing Transaction, including Liens on such receivables resulting from precautionary Uniform Commercial Code filings or from recharacterization of any such sale as a financing or a loan;

(22) Liens to secure any modification, refinancing, refunding, extension, renewal, replacement or defeasance (or successive modification, refinancing, refunding, extensions, renewals, replacements or defeasances) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (1), (3), (4), (10), (11), (12), (13) or this clause (22) of this definition; *provided* that (a) such new Lien will be limited to all or part of the same property that secured the original Lien (*plus* improvements, accessions, proceeds or dividends or distributions in respect thereof and After-Acquired Property) and (b) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (1), (3), (4), (10), (11), (12), (13) or this clause (22) of this definition at the time the original Lien became a Permitted Lien under the Bond Financing Agreement, *plus* (ii) any accrued and unpaid interest on the Indebtedness being so modified, refinanced, extended, replaced, refunded, renewed or defeased *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness or the modification, extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness; *provided, further* that that in the case of any Liens to secure any refinancing, refunding, extension or renewal of Indebtedness secured by a Lien referred to in clauses (4) or (10), the principal amount of any Indebtedness Incurred for such refinancing, refunding, extension or renewal shall be deemed secured by a Lien under clauses (4) or (10) and not this clause (22) for purposes of determining the principal amount of Indebtedness outstanding under clause (4) or (10);

(23) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens or insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(24) other Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) $100.0 million and (ii) 60% of Consolidated EBITDA of the Company and the Restricted Subsidiaries determined at the time of incurrence of such Lien for the most recently ended Test Period (calculated on a pro forma basis);

(25) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(26) (i) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (ii) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (iii) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(27) Liens securing judgments for the payment of money not constituting an Event of Default under Section 7.07 of the Bond Financing Agreement and clause (g) of the provisions described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT— Bond Financing Agreement—Events of Default;"

(28) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice, and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of set off) and that are within the general parameters customary in the banking industry;

(29) Liens deemed to exist in connection with Investments in repurchase agreements permitted under the Bond Financing Agreement; *provided* that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(30) Liens that are contractual rights of set-off (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Company and its Restricted Subsidiaries or (c) relating to purchase orders and other agreements entered into with customers of the Company or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(31) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(32) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(33) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under the Bond Financing Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted pursuant to Section 6.04 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement— Covenants of the Company—Asset Sales;"

(34) ground leases, subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Company or any of its Subsidiaries are located; provided such ground leases, subleases, licenses or sublicenses do not materially impair the use of the remainder of the Mortgaged Property and are subordinate to the lien of the Mortgages;

(35) Liens in connection with a Specified Sale and Lease-Back Transaction and any leasehold mortgage or similar Lien on the associated Lease;

(36) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(37) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Company or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(38) deposits of cash with the owner or lessor of premises leased and operated by the Company or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Company and such Subsidiary to secure the performance of the Company's or such Subsidiary's obligations under the terms of the lease for such premises;

(39) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(40) Liens on cash and Cash Equivalents used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under the Bond Financing Agreement;

(41) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(42) agreements to subordinate any interest of the Company or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Company or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(43) Liens securing Guarantees of any Indebtedness or other obligations otherwise permitted to be secured by a Lien under the Bond Financing Agreement;

(44) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any environmental law;

(45) Liens disclosed by the title insurance reports or policies delivered on or prior to the Closing Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by the Bond Financing Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(46) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Company or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(47) restrictive covenants affecting the use to which real property may be put; *provided* that the covenants are complied with;

(48) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(49) zoning, building and other similar land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements; *provided* that such restrictions and agreements are complied with;

(50) Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable law;

(51) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose; and

(52) any Lien contemplated by clause (26) of the definition of "Permitted Investments."

If any Liens are incurred to secure obligations incurred to refinance obligations initially incurred in reliance on a basket measured by reference to a percentage of Consolidated EBITDA, and such refinancing would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, plus any accrued and unpaid interest on the Indebtedness (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such refinancing Indebtedness) *plus* the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness. For purposes of this definition, the term "Indebtedness" will be deemed to include interest and other obligations payable on and with respect to such Indebtedness.

"Permitted Prior Lien" means any Lien that has priority over the Lien of the Collateral Agent for the benefit of the Pari Passu Lien Secured Parties which Lien was permitted under each Pari Passu Lien Debt Document.

"*Permitted Restricted Subsidiary Liens*" means clauses (5) through (9), (10) (with respect to clauses (5), (7) and (14) of Section 6.03(b) of the Bond Financing Agreement and the same clauses of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" *provided* that, with respect to such clause (14), only with respect to such clause (5)), (12) through (21), (22) (with respect to clauses (12), (13) and (22)), (23) through (35), (37) through (42), (44) through (49), (51) and (52) of the definition of "Permitted Liens."

"*Permitted Warrant Transaction*" means any call option, warrant or right to purchase (or substantially equivalent derivative transaction) on the Company's or a Parent Company's common stock sold by the Company or a Parent Company substantially concurrently with a related Permitted Bond Hedge Transaction.

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

"*Phase II Project*" means any capacity addition, line extension or addition of value-added product facilities, in a Similar Business, at the steel mini-mill located in Mississippi County, Arkansas.

"*Phase II Project Costs"* means all costs and expenses to be incurred by Parent, the Company or any Restricted Subsidiary in connection with the Development of the Phase II Project, and incurred after August 23, 2017, including, without limitation, the purchase of equipment and related services, the training of personnel relating to the Phase II Project, the financing of the Phase II Project, including interest expense incurred during Development, and activities reasonably related thereto.

"*Post-Petition Interest*" means interest, fees, expenses and other charges that pursuant to the ABL Credit Agreement, the Term Loan Credit Agreement, the Notes Indenture or any other Fixed Asset Pari Passu Lien Debt Documents (including the Bond Financing Agreement and any Specified Pari Passu Lien Debt Documents), continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

"*Predecessor Bond*" of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 3.07 of the Bond Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in said Section 3.07, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

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

"*Principal Account*" means the account of that name established in the Debt Service Fund pursuant to Section 5.01(a) of the Bond Indenture.

"*Principal Payment Date*" means any date on which any amounts payable with respect to the principal of the Bonds shall become due, whether upon redemption (including without limitation sinking fund redemption), acceleration, maturity or otherwise.

"*Project"* means the construction, start-up and operation and maintenance by the Company of one or more flat-roll steel mini mills constructed or to be constructed on land located in Mississippi County, Arkansas.

"Project Costs" means all costs and expenses incurred by the Grantors and their Subsidiaries in connection with the ownership, occupation, construction, testing, starting, repair, operation, maintenance and use of the Project, the training of personnel relating to the Project, the financing of the Project and activities reasonably related thereto, in each case incurred prior to August 23, 2017.

"*Public Company Costs*" means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Company's or its Restricted Subsidiaries' initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

"*Purchase Agreement*" means the Bond Purchase Agreement with respect to the 2019 Bonds, dated the date of the Limited Offering Memorandum, by and among the Bond Issuer, the Company and the Underwriter, and any similar agreement with respect to Additional Bonds.

"*Purchase Money Obligations*" means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

"*Qualified Capital Contribution*" means cash common equity capital contributions to, or cash proceeds from the issuance of Capital Stock in, Big River Steel Holdings LLC, a Delaware limited liability company, which Big River Steel Holdings LLC, upon receipt, contributes to Parent, which in turn, upon receipt, contributes to the Company.

"Qualified Equity Interests" means Equity Interests that are not Disqualified Stock.

"*Qualified Institutional Buyer*" has the meaning set forth in Rule 144A promulgated under the Securities Act of 1933, as amended.

"*Qualified Investments*" means (a) any of the following: bonds, debentures, notes or other evidence of indebtedness, other than subordinated or junior bonds, debentures, notes or other evidence of indebtedness, issued or guaranteed, other than on a subordinated or junior basis, by any of the following federal agencies, and any other agency or other instrumentality subsequently created by an act of the United States Congress, which are not backed by the full faith and credit of the United States of America: U.S. Export-Import Bank (Eximbank) direct obligations or fully guaranteed certificates of beneficial ownership; Farmers Home Administration certificates of beneficial ownership; securities of the Federal Financing Bank; Federal Housing Administration debentures; General Services Administration participation certificates; Federal National Mortgage Association senior debt obligations and mortgage-backed securities; Federal Home Loan Mortgage Corporation senior debt obligations and mortgage-backed securities; Federal Farm Credit Bank senior debt obligations and mortgage-backed securities; Government National Mortgage Association guaranteed mortgage-backed bonds and guaranteed pass- through obligations; Student Loan Marketing Association senior debt obligations; U.S. Maritime Administration guaranteed Title XI financing obligations; and U.S. Department of Housing and Urban Development project notes, local authority bond, new communities debentures-U.S. government guaranteed debentures and U.S. public housing notes and bonds-U.S. government guaranteed public housing notes and bonds and (b) securities evidencing ownership of the right to payment of specific principal or interest payments on an obligation described in (a) above, provided that such securities were created by or on behalf of the issuer of the applicable obligation and are held in the custody of a bank or trust company having a reported capital, surplus and undivided profits of at least $ 25,000,000 and a rating on its unsecured, unenhanced short-term obligations in the highest short- term category by at least one Rating Agency, in a special account separate from the general assets of such custodian.

"*Qualified Proceeds*" means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

"*Qualified Securitization Facility*" means any Securitization Facility (1) constituting a securitization financing facility that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and the applicable Restricted Subsidiary or Securitization Subsidiary and (b) all sales and/or contributions of Securitization Assets and related assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Company) or (2) constituting a receivables financing facility.

"*Rating*" means the credit rating of the Bonds by the Rating Agencies.

"*Rating Agencies*" means Moody's and S&P or if Moody's or S&P or if both do not make a rating on the Bonds publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Company which will be substituted for Moody's or S&P or both, as the case may be.

"*Ratings Reaffirmation*" means in the case of an event or proposed event, a reaffirmation by either of the Rating Agencies rating the Bonds that the then current Ratings on the 2019 Bonds will not be lower, after giving effect to the event or proposed event, than the Ratings of the 2019 Bonds in effect immediately prior to such event or proposed event.

"*Real Estate Asset*" means, at any time of determination, any interest (fee, leasehold or otherwise) of any Grantor in any real property, including Mortgaged Premises, distribution centers and warehouses and corporate headquarters and administrative offices.

"*Rebate Fund*" means the fund of that name established pursuant to Section 5.01(c) of the Bond Indenture.

"*Receivables Financing Transaction*" means any transaction or series of transactions entered into by the Company, BRS Finance Corp. or any Restricted Subsidiary pursuant to which such party consummates a "true sale" of its receivables to a nonrelated third party on market terms as determined in good faith by the Company; *provided* that such Receivables Financing Transaction is (i) non-recourse to Parent, the Company, BRS Finance Corp. and the Restricted Subsidiaries and their assets, other than any recourse solely attributable to a breach by Parent, the Company, BRS Finance Corp. or any Restricted Subsidiary of representations and warranties that are customarily made by a seller in connection with a "true sale" of receivables on a non-recourse basis and (ii) consummated pursuant to customary contracts, arrangements or agreements entered into with respect to the "true sale" of receivables on market terms for similar transactions.

"*Redemption Account*" means the account of that name established in the Debt Service Fund pursuant to Section 5.01(a) of the Bond Indenture.

"*Redemption Date*" means a date on which 2019 Bonds are subject to redemption pursuant to the terms of the Bond Indenture.

"*Refinance*" has the meaning assigned in the definition of "*Refinancing Indebtedness*" and "*Refinancing*" and "*Refinanced*" have meanings correlative to the foregoing.

"*Refinanced Debt*" has the meaning assigned to such term in the definition of "Refinancing Indebtedness".

"*Refinancing Indebtedness*" means (x) Indebtedness incurred by the Company or any Restricted Subsidiary, (y) Disqualified Stock issued by the Company or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease ("*Refinance*") any Indebtedness, Disqualified Stock or Preferred Stock, including Refinancing Indebtedness, so long as: (1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) the Indebtedness, the amount of the Preferred Stock or the liquidation preference of the Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the "*Refinanced Debt*"), *plus* (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, *plus* (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c), the "*Incremental Amounts*"); (2) such Refinancing Indebtedness has a: (a) Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; (b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the maturity date of the Bonds); and (3) to the extent such Refinancing Indebtedness Refinances (i) Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 6.01 of the Bond Financing Agreement and the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments," such Refinancing Indebtedness is subordinated to the Bonds or the Guarantee thereof at least to the same extent as the applicable Refinanced Debt or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively. Refinancing Indebtedness will not include: (a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not a Subsidiary Guarantor that refinances Indebtedness or Disqualified Stock of the Company; (b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Company that is not a Subsidiary Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or (c) Indebtedness or Disqualified Stock of the Company or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary; and, *provided*, *further* that (x) clause (2) of this definition will not apply to any Refinancing of any Indebtedness other than Indebtedness incurred under Section 6.03(b)(3) of the Bond Financing Agreement and clause (3) of the second paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock," any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof), Disqualified Stock and Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary "rollover" provisions and (y) assuming such credit facility were to be extended pursuant to such "rollover" provisions, such extended credit facility would comply with clause (2) of this definition).

"*Register*" means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to the Bond Indenture.

"*Registrar*" means the Trustee, or any successor Registrar which shall have become such pursuant to applicable provisions of the Bond Indenture.

"*Regular Record Date*" means the close of business on the fifteenth day preceding each Interest Payment Date.

"*Regulations*" means Treasury Regulations promulgated pursuant to the Code.

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

"*Required Term Lenders*" means the "*Required Lenders*" (or an equivalent term with substantially similar meaning) under and as defined in the Term Loan Credit Agreement.

"*Required Delayed Draw Term Lenders*" means the "Required Senior Term Lenders" (or an equivalent term with substantially similar meaning as the meaning of such term in the Original KfW Credit Agreement) under and as defined in the Specified Pari Passu Lien Debt Documents.

"*Responsible Officer*" means, with respect to a Person, the chief executive officer, chief operating officer, president, executive vice president, director of finance, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person. Unless otherwise specified, all references to a "Responsible Officer" shall refer to a Responsible Officer of the Company.

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

"*Restricted Subsidiary*" means, at any time, any direct or indirect Subsidiary of the Company (including any Foreign Subsidiary and BRS Finance Corp.) that is not then an Unrestricted Subsidiary; *provided* that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of "Restricted Subsidiary". Wherever the term "Restricted Subsidiary" is used with respect to any Subsidiary of a referenced Person that is not the Company, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Company on a *pro forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Company (unless such transactions would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a *pro forma* basis in accordance with the Bond Financing Agreement).

"*Revenue Account*" means the account entitled the "Revenue Account" held by the Depository Bank under the Deposit Agreement.

"*S&P*" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"*Sale and Lease- Back Transaction*" means any arrangement providing for the leasing by the Company or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a third Person in contemplation of such leasing. The net proceeds of any Sale and Lease-Back Transaction will be determined giving effect to transaction expenses and the tax effect of such transactions (including taxes paid or payable and tax attributes used as a result of such transactions).

"*Sanctions"* means any sanctions administered or enforced by the U.S. Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury, or the U.S. Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person," the European Union, Her Majesty's Treasury, the United Nations Security Council, or other relevant sanctions authority.

"*SCF*" means Stonebriar Commercial Finance LLC, a Delaware limited liability company.

"*SEC*" means the U.S. Securities and Exchange Commission or any governmental authority succeeding to any of its principal functions.

"*Second Specified Pari Passu Lien Debt Threshold Date*" means the date, after the occurrence of the First Specified Pari Passu Lien Debt Threshold Date, on which the sum of (1) the outstanding principal amount of the term loans under the Specified Pari Passu Lien Debt Documents plus (2) from and after the occurrence of the Initial Funding Date, the commitments under the Specified Pari Passu Lien Debt Documents subject to the Specified Commitment Condition is less than 50% of the aggregate outstanding principal amount of all Pari Passu Lien Debt or less than the aggregate outstanding principal amount of the largest Series of Pari Passu Lien Debt other than the Pari Passu Lien Debt incurred under the Specified Pari Passu Lien Debt Documents.

"*Secured Hedging Obligations*" means any Hedging Obligations under a Hedge Agreement entered into between the Company or another Grantor and a Hedge Bank or any guarantee thereof by the Company or another Grantor.

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

"*Secured Parties*" means (a) the Collateral Agent, (b) each Holder, (c) the Trustee, (d) each other Pari Passu Lien Secured Party and (e) the successors, replacements and assigns of each of the foregoing, and shall include, without limitation, all former Collateral Agent, Holder, Trustee and the Pari Passu Lien Secured Party to the extent that any Obligations owing to such Persons were incurred while such Persons were Collateral Agent, Holder, Trustee or Pari Passu Lien Secured Party and such Obligations have not been paid or satisfied in full.

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

"*Securitization Assets*" means (a) the accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

"*Securitization Facility*" means any transaction or series of securitization financings that may be entered into by the Company or any Restricted Subsidiary pursuant to which the Company or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Company or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Company or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Company or any of its Subsidiaries.

"*Securitization Fees*" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

"*Securitization Subsidiary*" means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

"*Security Documents*" means the Collateral Trust Agreement, each Additional Pari Passu Lien Debt Designation, each of the other Pari Passu Lien Security Documents, each of the other security agreements, pledge agreements, mortgages, deeds of trust, collateral assignments, agreements creating a security interest, charge or encumbrance of any kind, and related agreements, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating the security interests in the Collateral as contemplated by the Collateral Trust Agreement.

"*Senior Indebtedness*" means:

(1) all Indebtedness of the Company or BRS Finance Corp. or any Subsidiary Guarantor outstanding under the Term Loan Credit Agreement, the Notes Indenture, the ABL Facility and the Bond Financing Agreement and related Guarantees (including interest accruing on or after the filing of any petition in bankruptcy or similar proceeding or for reorganization of the Company or BRS Finance Corp. or any Subsidiary Guarantor (at the rate provided for in the documentation with respect thereto, regardless of whether or not a claim for post-filing interest is allowed in such proceedings)), and any and all other fees, expense reimbursement obligations, indemnification amounts, penalties, and other amounts and all obligations of the Company or BRS Finance Corp. or any Subsidiary Guarantor to reimburse any bank or other Person in respect of amounts paid under letters of credit, acceptances or other similar instruments;

(2) all (a) Hedging Obligations (and guarantees thereof) and (b) obligations in respect of Cash Management Services (and guarantees thereof), in the case of each of clauses (a) and (b), owing to a lender under the Term Loan Credit Agreement, the ABL Facility or any Affiliate of such lender (or any Person that was a lender or an Affiliate of such lender at the time the applicable agreement giving rise to such Hedging Obligation or Cash Management Obligations was entered into); *provided* that such Hedging Obligations and obligations in respect of Cash Management Services, as the case may be, are permitted to be incurred under the terms of the Bond Financing Agreement;

(3) any other Indebtedness of the Company or BRS Finance or any Subsidiary Guarantor permitted to be incurred under the terms of the Bond Financing Agreement, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Obligations under the Bond Financing Agreement or any related Guarantee; and

(4) all Obligations with respect to the items listed in the preceding clauses (1), (2) and (3); *provided* that Senior Indebtedness will not include: (a) any obligation of such Person to the Company or any of its Subsidiaries; (b) any liability for federal, state, local or other taxes owed or owing by such Person; (c) any accounts payable or other liability to trade creditors arising in the ordinary course of business or consistent with industry practice; (d) any Indebtedness or other Obligation of such Person which is subordinate or junior in any respect to any other Indebtedness or other Obligation of such Person; or (e) that portion of any Indebtedness which at the time of incurrence is incurred in violation of the Bond Financing Agreement.

"*Senior Secured Net Leverage Ratio*" means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding on the last day of such Test Period *minus* the aggregate amount of cash and Cash Equivalents of the Company and the Restricted Subsidiaries on such date that (x) would not appear as "restricted" on a consolidated balance sheet of the Company and the Restricted Subsidiaries or (y) are restricted in favor of the lenders or investors under the Term Loan Credit Agreement, the ABL Facility, or Other Pari Passu Lien Obligations, to (b) Consolidated EBITDA of the Company for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* provisions set forth in the definition of Fixed Charge Coverage Ratio.

"*Senior Secured Notes*" means $600.0 million aggregate principal amount of 7.250% Senior Secured Notes issued by the Company and BRS Finance Corp., as co-issuers.

"*Series*" means Bonds identified as a separate series that are authenticated and delivered on original issuance and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Bond Indenture, or any Supplemental Indenture.

"*Series 2019 Costs of Issuance Account*" means the account of that name established in the Construction Fund pursuant to Section 5.01(b) of the Bond Indenture.

"*Series 2019 Note*" means the Series 2019 Closed End Line of Credit Promissory Note, dated the Closing Date, from the Company to the Bond Issuer, and assigned to the Trustee, issued to secure the Company's obligations under the Bond Financing Agreement, and any other promissory note delivered in connection with Additional Bonds.

"*Series of Pari Passu Lien Debt*" means, severally, Funded Debt under the Term Loan Credit Agreement, the Notes Indenture, the Specified Pari Passu Lien Debt Documents, the Bond Financing Agreement, and each other issue or series of Pari Passu Lien Debt for which a single transfer register is maintained.

"*Significant Subsidiary*" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Closing Date; *provided* that notwithstanding the foregoing, in no event will any Securitization Subsidiary be considered a Significant Subsidiary for purposes of Sections 7.05, 7.06 and 7.07 of the Bond Financing Agreement and clauses (e), (f) and (g) of the provisions described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Events of Default."

"*Similar Business*" means (1) any business conducted or proposed to be conducted by the Company or any Restricted Subsidiary on the Closing Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses which the Company and its Restricted Subsidiaries conduct or propose to conduct as of the Closing Date.

"*Sinking Fund Installment Payment Subaccount*" means the subaccount of that name established in the Principal Account within the Debt Service Fund pursuant to the Bond Indenture.

"*Sinking Fund Installments*" mean installment payments in amounts sufficient to redeem the principal amount of 2019 Bonds subject to mandatory redemption on the applicable redemption date in accordance with the mandatory sinking fund redemption provisions relating thereto set forth in the Bond Indenture.

"*SMS Direct Agreement*" means that certain direct agreement (if any) dated as of the Closing Date by and among the Borrower, SMS Site Services Inc., SMS Group GMBH and the Collateral Agent.

"*Solvent*" and "*Solvency*" mean, with respect to any Person on any date of determination, that on such date:

(1) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise,

(2) the present fair saleable value of the property of such Person is 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,

(3) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and

(4) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

"*Special Record Date*" means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to the Bond Indenture.

"Specified Access Period" means for the Commercial Building Collateral or the Equipment Lease Collateral, as the case may be, the period, which begins on the earlier of (i) the day on which the ABL Agent provides the Commercial Building Lender or the Equipment Lessor, as the case may be, with an enforcement notice described in the Intercreditor Agreement and as described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement;" and (ii) the date on which the Commercial Building Lender or SCF, as the case may be, provides the ABL Agent with the notice required pursuant to the Intercreditor Agreement and as described in the Limited Offering Memorandum under the heading "SECURITY AND SOURCES OF PAYMENT FOR THE 2019 BONDS AND OTHER PARI PASSU LIEN DEBT—Intercreditor Agreement that the Commercial Building Lender or the Equipment Lessor (or any of their agents), as the case may be, has either obtained possession or control of such Commercial Building Collateral or Equipment Lease Collateral, as applicable, or sold or otherwise disposed of such Commercial Building Collateral or Equipment Lease Collateral, as applicable, and ends on the earliest of (A) the 180th day after such date; (B) the date on which all or substantially all of the ABL Priority Collateral located on the Commercial Building Collateral and the Equipment Lease Collateral is sold, collected or liquidated; and (C) the Discharge of ABL Obligations.

"*Specified Commitment Condition*" has the meaning specified in the definition of Initial Funding Date.

"*Specified Pari Passu Lien Debt Representative*" means KfW IPEX-Bank GmbH, whether acting in its own capacity or as agent to the lenders under any Specified Pari Passu Lien Debt Document or any of its Affiliates, or any other such representative that has been designated as "Specified Pari Passu Lien Debt Representative" by the Company in accordance with the Collateral Trust Agreement, that delivers a Collateral Trust Joinder in the form of Exhibit B to the Collateral Trust Agreement.

"*Specified Pari Passu Lien Debt*" means the Indebtedness incurred pursuant to the Specified Pari Passu Lien Debt Documents.

"*Specified Pari Passu Lien Debt Documents*" means (a) any credit agreement described in the Collateral Trust Joinder delivered by the Specified Pari Passu Lien Debt Representative governing Funded Debt that is designated by the Company as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement and (b) any other credit agreement entered into subsequent to the delivery of the Collateral Trust Joinder described in clause (a) above governing another Series of Pari Passu Lien Debt for which the Specified Pari Passu Lien Debt Representative maintains the transfer register and is appointed as a representative of the Pari Passu Lien Debt (for purposes related to the administration of the Pari Passu Lien Security Documents) pursuant to such credit agreement or other agreement and which governs Funded Debt that is designated by the Company as "Pari Passu Lien Debt" for the purposes of the Pari Passu Lien Debt Documents in an Additional Pari Passu Lien Debt Designation executed and delivered in accordance with the Collateral Trust Agreement; provided, however, that no credit agreement may be designated as, or deemed to be, a "Specified Pari Passu Lien Debt Document" if such credit agreement provides for any of the following: (i) payment of interest in cash rather than solely in kind during a Specified SPOC Period, (ii) scheduled amortization payments of principal or other repayments of principal during a Specified SPOC Period (it being understood that such credit agreement will have scheduled amortization payments of principal following the expiration of the Specified SPOC Period and that none of the foregoing shall prohibit the payment of interest in cash or payment of principal during the Specified SPOC Period as long as such payment is in each case funded solely with the proceeds of Qualified Capital Contributions), or (iii) the scheduled final maturity of the Funded Debt evidenced thereby that is prior to the scheduled final maturity of the Senior Secured Notes.

"*Specified Sale and Lease-Back Transaction*" means any arrangement providing for the leasing by the Company or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Restricted Subsidiary to a Governmental Authority in contemplation of such leasing, and which is in connection with the purchase by the Company or an Affiliate of industrial development revenue bonds, or similar instruments, of a Governmental Authority and pursuant to which payments of principal, premiums and interest thereon are payable solely from income derived by such Governmental Authority from such leasing arrangement, including the arrangement contemplated by the Act 9 Bond Documents solely to the extent that parties under the Act 9 Bond Documents "net settle" any and all payments under such arrangement pursuant to the terms thereof, including pursuant to the Home Office Payment Agreement, dated as of April 28, 2015.

"*Specified SPOC Period*" means a period after the Initial Funding Date ending on the earlier to occur of (i) 6 months following SPOC and (ii) 30 months following the Initial Funding Date.

"*Specified Transaction*" means (i) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Company, in each case, in connection with an acquisition or Investment, (ii) any designation of operations or assets of the Company or a Restricted Subsidiary as discontinued operations (as defined under GAAP), (iii) any Investment that results in a Person becoming a Restricted Subsidiary, (iv) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with the Bond Financing Agreement (v) any purchase or other acquisition of a business of any Person, or assets constituting a business unit, line of business or division of any Person, (vi) any Asset Sale (without regard to any de minimis thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Company or (b) of a business, business unit, line of business or division of the Company or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise, (vii) any operational changes identified by the Company that have been made by the Company or any Restricted Subsidiary during the Test Period or (viii) any Restricted Payment or other transaction that by the terms of the Bond Financing Agreement requires a financial ratio to be calculated on a *pro forma* basis.

"*SPOC*" means the "starting point of credit" as determined pursuant and in accordance with the OECD Rules and any then applicable policies and regulations of any relevant export credit agency.

"*Standstill Commencement Date*" has the meaning set forth in the definition of "CTA Parties Standstill Period."

"*Subordinated Indebtedness*" means, with respect to the Obligations under the Bond Financing Agreement and the Series 2019 Note, (1) any Indebtedness of the Company that is by its terms subordinated in right of payment thereto, and (2) any Indebtedness of any Guarantor that is by its terms subordinated in right of payment to the Guarantee of such entity of the Obligations under the Bonds Financing Agreement and the Series 2019 Note.

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

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.00% of the total voting power of Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which: (i) more than 50.00% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and (ii) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" refer to a Subsidiary or Subsidiaries of the Company**.**

"*Subsidiary Guarantee*" means the Guarantee of a Subsidiary Guarantor.

"*Subsidiary Guarantor*" means each Restricted Subsidiary of the Company, if any, that Guarantees the Obligations under the Bond Financing Agreement in accordance with the terms of the Guarantee (excluding any Parent Company that provides any such guarantees).

"*Supplemental Indenture*" means any indenture supplemental to the Bond Indenture entered into by and between the Issuer and the Trustee in accordance with Article VIII of the Bond Indenture.

"*Tax-Exempt Bonds*" means any Bonds, the interest on which is (i) excludable from gross income for federal income tax purposes, except with respect to interest on any such Bond for any period during which such Bond is held by a person who, within the meaning of Section 147(a) of the Code, is a "substantial user" or a "related person" to such a "substantial user" of the facilities financed or refinanced with the proceeds of such Bond, and (ii) an item of tax preference that is includable in alternative minimum taxable income for purposes of determining the alternative minimum tax.

"*Tax-Exempt Obligation*" means (a) any obligation the interest on which is excludable from gross income under Section 103(a) of the Code and which is rated at least "AA" or its equivalent by at least one Rating Agency and is not a "specified private activity bond" within the meaning of Section 57(a)(5)(C) of the Code, or (b) any interest in a regulated investment company, the income of which is at least 95% excludable to the holder under Section 103(a) of the Code, and which invests all its invested assets in obligations described in clause (a) hereof and is rated "Aam" or "AAm-G" or its equivalent by a Rating Agency.

"*Tax-Exempt Project*" has the meaning ascribed to such term in the Bond Financing Agreement.

"*Tax-Exempt Project Costs*" means any and all costs incurred by the Bond Issuer or the Company in connection with the acquisition, construction, and equipping, as the case may be, of the Tax Exempt Project, and all other costs permitted by the Act and the Code to be paid or reimbursed from the proceeds of the 2019 Bonds including, but not limited to, the following:

(i) (a) the cost of the preparation of plans and specifications (including any preliminary study or planning thereof or any aspect thereof), (b) the cost of acquisition and construction thereof and all construction, acquisition, and installation expenses required to provide utility services or other facilities and all real or personal properties deemed necessary in connection therewith (including development, architectural, engineering, and supervisory services with respect to any of the foregoing), and (c) any other costs and expenses relating to the acquisition, construction, and placing in service thereof;

(ii) the purchase price of the equipment in connection therewith, including all costs incident thereto, payment for labor, services, materials, and supplies used or furnished in site improvement and in the construction thereof, including all costs incident thereto, payment for the cost of the construction, acquisition, and installation of utility services or other facilities in connection therewith, payment for all real and personal property deemed necessary in connection therewith, payment of consulting and development fees in connection therewith, and payment for the miscellaneous expenses incidental to any of the foregoing items including the premium on any surety bond;

(iii) the fees or out-of-pocket expenses, if any, of those providing services with respect thereto, including, but not limited to, architectural, engineering, development and supervisory services;

(iv) any other costs and expenses relating to the Tax Exempt Project, including, without limitation, interest expense, that constitute costs or expenses for which the Company may expend 2019 Bond proceeds under the Act, but other than costs of issuance of the Bonds; and

(v) reimbursement to the Company for any costs described above paid by the it, whether before or after the execution of the Bond Financing Agreement; provided, however, that reimbursement for any expenditures made prior to the execution of the Bond Financing Agreement, as applicable, from the Construction Fund shall only be permitted for expenditures meeting the requirements of the Regulations, including but not limited to, §1.150-2 of the Regulations.

"*Term Loan Administrative Agent*" means Goldman Sachs Bank USA.

"*Term Bonds*" means 2019 Bonds that are payable on or before their specified maturity dates from Sinking Fund Installments.

"Term Loan" means the loan of the proceeds of the Term Loan Credit Agreement from the lenders and other entities party thereto to the Company, pursuant to the Term Loan Credit Agreement.

"*Term Loan Credit Agreement*" means the first lien secured term loan credit agreement, dated as of August 23, 2017, by and among the Company, Parent, Goldman Sachs Bank USA, as the administrative agent, and the lenders and other entities party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including any replacement thereof if such replacement thereof which has been designated as Additional Pari Passu Lien Debt under the Collateral Trust Agreement.

"*Test Period*" in effect at any time means the Company's most recently ended four consecutive fiscal quarters for which internal financial statements are available (as determined in good faith by the Company).

"*Top Parent*" means Big River Steel Parent LLC and any successor thereof.

"*Total Net Leverage Ratio*" means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding on the last day of such Test Period *minus* the aggregate amount of cash and Cash Equivalents of the Company and the Restricted Subsidiaries on such date that (x) would not appear as "restricted" on a consolidated balance sheet of the Company or (y) are restricted in favor of the Term Loan Credit Agreement, the ABL Facility or Other Pari Passu Lien Obligations to (b) Consolidated EBITDA of the Company for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of Fixed Charge Coverage Ratio.

"*Trust Estate*" has the meaning given to such term in the Bonds Indenture.

"*Trust Estate Revenues*" means (a) the Bond Financing Payments, (b) all of the moneys received or to be received by the Bond Issuer or the Trustee in respect of payment of the amounts owing under the Bond Financing Agreement, (c) all moneys and investments in the Debt Service Fund (created and held under the Bond Indenture), (d) with regard to a Series of Bonds, the proceeds of such Series and investments thereof in the Construction Fund (or in any account or subaccount therein relating to such Series) created and held by the Trustee for the benefit of the Bond Issuer and the holders of the Bonds until expended, (e) with regard to any other Series of Bonds, all amounts on deposit in a debt service reserve fund (if any) held for the benefit of the holders of such Series of Bonds, and (f) all income and profit from the investment of the foregoing moneys. For the avoidance of doubt, with regard to (d) herein, any proceeds of a Series of Bonds constitute "Trust Estate Revenues" only for the Series from which such proceeds were derived and for no other Series of Bonds.

"*Trustee*" means the Trustee at the time acting on behalf of itself and the owners of the Bonds under the Bond Indenture, originally U.S. Bank National Association, as Trustee, and any successor Trustee as determined or designated under or pursuant to the Bond Indenture.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa- 777bbbb).

"*Unassigned Issuer's Rights*" shall have the meaning ascribed thereto in the Bond Financing Agreement.

"*Underwriter*" means, collectively, Goldman Sachs & Co. LLC, Crews & Associates, Inc. and SunTrust Robinson Humphrey, Inc.

"*Uniform Commercial Code*" or "*UCC*" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions of the Pari Passu Lien Security Documents relating to such perfection, priority or remedies.

"*Unrestricted Subsidiary*" means:

(1) any Subsidiary of the Company which at the time of determination is an Unrestricted Subsidiary (as designated by the Company, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Company may designate any Subsidiary of the Company (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Company or any Subsidiary of the Company (other than solely any Subsidiary of the Subsidiary to be so designated);

provided:

(1) such designation complies with Section 6.01 of the Bond Financing Agreement and as described in the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Restricted Payments;" and

(2) each of (a) the Subsidiary to be so designated and (b) its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary). The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to such designation, no Event of Default will have occurred and be continuing and the Company could incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the Section 6.03(a) of the Bond Financing Agreement and of the first paragraph of the covenant described in the Limited Offering Memorandum under the heading "FINANCING FOR THE TAX-EXEMPT PROJECT—Bond Financing Agreement—Covenants of the Company—Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock;" and. Any such designation by the Company will be notified by the Company to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"*Use of Proceeds Certificate*" means the Use of Proceeds Certificate and Agreement, dated the Closing Date, between the Bond Issuer and the Company, as amended from time to time pursuant to the terms thereof.

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

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing: (1) the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, *multiplied* by the amount of such payment; by (2) the sum of all such payments; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the "*Applicable Indebtedness*"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

"*Wholly-Owned Subsidiary*" of any Person means a Subsidiary of such Person, 100.00% of the outstanding Equity Interests of which (other than directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required under applicable law) is at the time owned by such Person and/or by one or more Wholly-Owned Subsidiaries of such Person.

"*Wholly-Owned Restricted Subsidiary*" is any Wholly-Owned Subsidiary that is a Restricted Subsidiary.

Exhibit 99.1

NEWS RELEASE

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FOR IMMEDIATE RELEASE

UNITED STATES STEEL CORPORATION COMPLETES BIG RIVER STEEL ACQUISITION

- **Enables profitable growth through sustainable production of the most advanced high strength steels from the only LEED-certified steel mill**

- **Creates North America's only customer-centric "Best of Both" steelmaker, combining world-competitive integrated and mini mill technologies to improve through-cycle stockholder returns**

- **Aligns superior workforce around more innovative and entrepreneurial "Best of Both" strategy**

PITTSBURGH, January 15, 2021 – United States Steel Corporation (NYSE: X) ("U. S. Steel") announced today it closed its acquisition of the remaining equity of Big River Steel ("Big River Steel") for approximately $774 million from cash on hand. The transaction met customary closing conditions, including antitrust approval from the United States Department of Justice.

"We are creating the first 'Best of Both' integrated and mini mill steel company. Taking a page from the Big River Steel playbook, we are closing on this world competitive green steel asset purchase under budget and ahead of schedule," said U. S. Steel President and Chief Executive Officer David Burritt. "Our customers now have access to a truly sustainable source of the most advanced high strength steels. Our customer-centric organization will provide customers, employees, communities and investors with the world competitive advantages from the most advanced process technology and the intellectual capital necessary to produce the most advanced products."

"The innovative and entrepreneurial collaboration we are already seeing has us even more enthused about the potential for our people and our 'Best of Both' company. This is not an either/or initiative where you compromise the competitive advantage of one versus the other. Instead, we are dedicated to encouraging and sharing the best attributes of both, to the benefit of our customers. We fully expect to generate profitable growth quickly in 2021 and enable a more nimble, innovative, and cost-effective company across the business cycle."

U. S. Steel's management team will provide additional detail on the Big River Steel acquisition during the company's fourth quarter 2020 earnings conference call scheduled on January 29, 2021, at 8:30 a.m. EST. The call will be available via the U. S. Steel website. To access the webcast, visit the website at www.ussteel.com and click "Investors." Replays of the conference call will be available on the website after 10:30 a.m. EST on January 29, 2021.

Barclays served as exclusive M&A financial advisor, while PJT Partners and Rothschild & Co. served as financing advisors to U. S. Steel on the acquisition, and Milbank LLP provided legal counsel.

Big River Steel is a LEED-certified Flex Mill™ in northeast Arkansas that is believed to be the newest and most advanced flat rolled mill in North America. Big River Steel's advanced manufacturing technology and skilled operators combined with U. S. Steel's product development capabilities and intellectual property have allowed Big River Steel to produce 14 advanced U. S. Steel grades, including substrate for its XG3™ grade of Generation 3 advanced high-strength steel (AHSS). Big River Steel offers high-quality products and services to discerning customers in the automotive, energy, construction, and agricultural industries. Big River Steel's Phase II-A expansion doubled the mill's hot-rolled steel production capacity to 3.3 million tons annually, establishing it as one of the largest electric arc furnace-oriented flat-rolled mills in North America. The Phase II-A expansion was completed in November 2020, ahead of schedule and below budget.

FORWARD-LOOKING STATEMENTS

This release contains information that may constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as

amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We intend the forward-looking statements to be covered by the safe harbor provisions for forward-looking statements in those sections. Generally, we have identified such forward-looking statements by using the words “believe,” “expect,” “intend,” “estimate,” “anticipate,” “project,” “target,” “forecast,” “aim,” “should,” “will,” “may” and similar expressions or by using future dates in connection with any discussion of, among other things, operating performance, trends, events or developments that we expect or anticipate will occur in the future, statements relating to volume changes, share of sales and earnings per share changes, anticipated cost savings, potential capital and operational cash improvements, anticipated disruptions to our operations and industry due to the COVID-19 pandemic, changes in global supply and demand conditions and prices for our products, international trade duties and other aspects of international trade policy, the integration of Big River Steel in our existing business, business strategies related to the combined business and statements expressing general views about future operating results. However, the absence of these words or similar expressions does not mean that a statement is not forward-looking. Forward-looking statements are not historical facts, but instead represent only the Company’s beliefs regarding future events, many of which, by their nature, are inherently uncertain and outside of the Company’s control. It is possible that the Company’s actual results and financial condition may differ, possibly materially, from the anticipated results and financial condition indicated in these forward-looking statements. Management believes that these forward-looking statements are reasonable as of the time made. However, caution should be taken not to place undue reliance on any such forward-looking statements because such statements speak only as of the date when made. Our Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. In addition, forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our Company's historical experience and our present expectations or projections. These risks and uncertainties include, but are not limited to our ability to realize the level of cost savings, productivity improvement, growth or other anticipated benefits and additional future synergies, including in the time period anticipated, of the acquisition of Big River Steel; our ability to successfully integrate the businesses of Big River Steel into our existing businesses, including uncertainties associated with maintaining relationships with customers, vendors and employees, as well as differences in operating technologies, cultures, and management philosophies that may delay successful integration; additional debt, which we assumed in connection with the acquisition of Big River Steel and incurred to enhance our liquidity during the COVID-19 pandemic, may negatively impact our credit profile and limit our financial flexibility; business strategies for the combined company's operations; the diversion of management’s attention from ongoing business operations; our ability to retain and hire key personnel, including within the Big River Steel business, and to access our distribution channels, including the availability of workforce and subcontractors; potential adverse reactions or changes to business relationships resulting from the completion of the acquisition of Big River Steel; unknown or underestimated liabilities and unforeseen increased expenses or delays associated with the acquisition and integration beyond current estimates; and the risks and uncertainties described in “Item 1A. Risk Factors” of our Annual report on Form 10-K, quarterly reports on Form 10-Q and those described from time to time in our future reports filed with the Securities and Exchange Commission.

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2021-003

Founded in 1901, the United States Steel Corporation is a Fortune 250 company and a leading steel producer. Together with its subsidiary Big River Steel and an unwavering focus on safety, the company’s customer-centric “Best of Both” world-competitive integrated and mini mill technology strategy is advancing a more secure, sustainable future for U. S. Steel and its stakeholders. With a renewed emphasis on innovation, U. S. Steel serves the automotive, construction, appliance, energy, containers and packaging industries with high value-added steel products such as U. S. Steel’s proprietary XG3™ advanced high- strength steel. The company also maintains competitively advantaged iron ore production and has an annual raw steelmaking capability of 26.2 million net tons. U. S. Steel is headquartered in Pittsburgh, Pennsylvania, with world-class operations across the United States and in Central Europe. For more information, please visit www.ussteel.com.