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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): December 14, 2020

TravelCenters of America Inc.

(Exact Name of Registrant as Specified in its Charter)

Maryland	001-33274	20-5701514
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)
24601 Center Ridge Road, Westlake, OH		44145-5639
(Address of principal executive offices)		(Zip Code)

(440) 808-9100
(Registrant's telephone number, including area code)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of Each Class	Trading Symbols	Name of Each Exchange on Which Registered
Shares of Common Stock, $0.001 Par Value Per Share	TA	The Nasdaq Stock Market LLC
8.25% Senior Notes due 2028	TANNI	The Nasdaq Stock Market LLC
8.00% Senior Notes due 2029	TANNL	The Nasdaq Stock Market LLC
8.00% Senior Notes due 2030	TANNZ	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

On December 14, 2020 (the "Closing Date"), TravelCenters of America Inc. (the "Company") entered into a Credit Agreement with Citibank, N.A., as administrative agent, Delaware Trust Company, as collateral agent, and the lenders from time to time party thereto (the "Term Loan Credit Agreement"), which provides for a new $200.0 million senior secured term loan facility (the "Term Loan Facility").

Interest Rate

Borrowings under the Term Loan Facility shall bear interest at a rate per annum equal to, at the election of the Company, either (a) an alternate base rate (which will be the highest of (i) the prime rate, (ii) 0.5% per annum above the federal funds effective rate and (iii) one-month LIBOR plus 1.00% per annum) plus 5.00% or (b) LIBOR rate (subject to a floor of 1.00%) determined by reference to the cost of funds for U.S. dollar deposits, plus 6.00% (or, if no interbank rate that is broadly accepted by the syndicated loan market exists, a successor or alternative index rate as determined in accordance with the terms of the Term Loan Credit Agreement). Interest is payable on a quarterly basis based on the principal amount outstanding during the preceding quarter.

Amortization and Final Maturity

The Term Loan Facility requires scheduled quarterly amortization payments equal to 0.25% of the original principal amount of the Term Loan Facility, with the balance of the Term Loan Facility to be paid on December 14, 2027.

Mandatory Prepayments

The Term Loan Facility requires customary mandatory prepayments on account of excess cash flow, non-ordinary course asset sales and casualty and condemnation events.

Voluntary Prepayments

Voluntary prepayments of the Term Loan Facility within twenty four months of the Closing Date will be subject to a customary make-whole premium. Thereafter, the Term Loan Facility may be voluntarily prepaid at any time without premium or penalty.

Guarantees and Security

All obligations under the Term Loan Facility are unconditionally guaranteed jointly and severally by substantially all of each of the Company's existing and future direct and indirect wholly-owned domestic subsidiaries.

All obligations under the Term Loan Facility are secured, subject to certain exceptions, by substantially all of the assets of the Company and substantially all of its wholly-owned domestic subsidiaries.

Certain Covenants and Events of Default

The Term Loan Facility contains a number of restrictive covenants that, among other things and subject to certain exceptions, restrict the ability of the Company and the ability of its subsidiaries to incur additional indebtedness; pay dividends on capital stock or redeem, repurchase or retire capital stock; make investments, acquisitions, loans and advances; create negative pledges or restrictions on the payment of dividends or payment of other amounts owed from subsidiaries; engage in transactions with affiliates; sell, transfer or otherwise dispose of assets, including capital stock of subsidiaries; materially alter the conduct of the business; modify certain material documents; change the fiscal year; consolidate, merge, liquidate or dissolve; incur liens; and make prepayments of unsecured or junior lien secured debt.

The Term Loan Facility also contains certain customary representations and warranties, affirmative covenants and reporting obligations. In addition, the lenders under the Term Loan Facility are permitted to accelerate the loans or exercise other specified remedies available to secured creditors upon the occurrence of certain events of default, subject to certain grace periods and exceptions, which include, among others, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain material indebtedness, certain events of bankruptcy, certain events under the Employee Retirement Income Security Act of 1974, as amended, material judgments and changes of control.

In connection with entering into the Term Loan Credit Agreement, the Company also entered into an amendment (the "ABL Amendment") to its Amended and Restated Loan and Security Agreement, dated as of October 25, 2011, by and among the Company and TA Operating LLC, as borrowers, each of the guarantors named therein, Wells Fargo Capital Finance LLC, as agent, and the lenders from time to time party thereto (the "ABL Credit Agreement"). The Amendment amended the ABL Credit Agreement to, among other things: (a) permit the incurrence of the Term Loan Credit Facility and (b) increase the unused line fee by 12.5 basis points to 37.5 basis points.

The foregoing summaries of the Term Loan Credit Agreement and the ABL Amendment are subject to, and qualified in their entirety by, the full text of the Term Loan Credit Agreement and the ABL Amendment, which are filed as Exhibits 10.1 and 10.2 hereto, respectively, and are incorporated herein by reference.

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

The information set forth above under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

10.1	Credit Agreement, dated as of December 14, 2020 among TravelCenters of America Inc., Citibank, N.A., as administrative agent, Delaware Trust Company, as collateral agent, and the lenders from time to time party thereto.
10.2	Amendment No. 4 to Amended and Restated Loan and Security Agreement, dated as of December 14, 2020, among TravelCenters of America Inc. and TA Operating LLC, as borrowers, each of the guarantors named therein, Wells Fargo Capital Finance LLC, as agent, and the lenders from time to time party thereto.
104	Cover Page Interactive Data File (formatted as Inline XBRL).

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.

TravelCenters of America Inc.

Date: December 16, 2020

By: /s/ Peter J. Crage
Peter J. Crage
Executive Vice President, Chief Financial Officer and Treasurer

Exhibit 10.1

EXECUTION VERSION

CREDIT AGREEMENT

dated as of December 14, 2020

among

TRAVELCENTERS OF AMERICA INC.,
as the Borrower,

THE LENDERS PARTY HERETO,

CITIBANK, N.A.,
as Administrative Agent

and

DELAWARE TRUST COMPANY,

as Collateral Agent

CITIBANK, N.A.,
BOFA SECURITIES, INC.,
PNC CAPITAL MARKETS LLC,
U.S. BANK NATIONAL ASSOCIATION

and

WELLS FARGO SECURITIES, LLC
as Joint Lead Arrangers and Joint Bookrunners

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Exhibits and Schedules

CREDIT AGREEMENT, dated as of December 14, 2020 (this "Agreement"), among TRAVELCENTERS OF AMERICA INC., a Maryland corporation (together with its permitted successors and assigns, the "Borrower"), the LENDERS party hereto from time to time, CITIBANK, N.A., as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and DELAWARE TRUST COMPANY, as collateral agent for the Secured Parties (in such capacity, the "Collateral Agent").

WHEREAS, the Borrower has requested that the Lenders extend to the Borrower Term Loans in an aggregate principal amount of $200,000,000 for general corporate purposes.

NOW, THEREFORE, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"ABL Agent" shall mean Wells Fargo Capital Finance, LLC, in its capacity as administrative agent and collateral agent under the ABL Credit Agreement and the other ABL Documents, together with its successors and assigns in such capacity.

"ABL Credit Agreement" shall mean the Amended and Restated Loan and Security Agreement, dated as of October 25, 2011, by and among the Loan Parties, TA West Greenwich, the ABL Agent and the Lenders (as defined therein), as amended by Amendment No. 1 to Amended and Restated Loan and Security Agreement, dated as of December 9, 2014, Amendment No. 2 to Amended and Restated Loan and Security Agreement, dated as of October 12, 2018, Amendment No. 3 to Amended and Restated Loan and Security Agreement, dated as of July 19, 2019, and Amendment No. 4 to Amended and Restated Loan and Security Agreement, dated as of the Closing Date, as the same may be further amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original administrative agent and lenders or other agents and lenders or otherwise, and whether provided under the original credit agreement or one or more other credit agreements, indentures, financing agreements or otherwise, including any agreement extending the maturity thereof, otherwise restructuring all or any portion of the Indebtedness thereunder, increasing the amount loaned or issued thereunder, altering the maturity thereof or providing for other Indebtedness), in each case as and to the extent not prohibited by the ABL/Term Intercreditor Agreement, unless such agreement, instrument or document expressly provides that it is not intended to be and is not an ABL Credit Agreement.

"ABL Documents" shall mean the ABL Credit Agreement and the other "Financing Agreements" (as defined in the ABL Credit Agreement).

"ABL Loans" has the meaning assigned to the term "Loans" in the ABL Credit Agreement.

"ABL Obligations" has the meaning assigned to the term "Obligations" in the ABL Credit Agreement.

"ABL Priority Collateral" has the meaning assigned to the term "ABL Priority Collateral" in the ABL/Term Intercreditor Agreement.

"ABL/Term Intercreditor Agreement" shall mean the Intercreditor Agreement, dated as of the Closing Date, among the Borrower, the Subsidiary Loan Parties, the Administrative Agent, the Collateral Agent, the ABL Agent and the other persons from time to time party thereto, as amended, restated, renewed, replaced, supplemented or otherwise modified from time to time.

"ABR" shall mean, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Effective Rate in effect for such day plus 0.50%, (b) the Prime Rate in effect on such day and (c) the Adjusted LIBO Rate for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%; provided that, for the avoidance of doubt, the LIBO Rate for any day shall be based on the rate determined on such day at approximately 11:00 a.m. (London time) by reference to the ICE Benchmark Administration Interest Settlement Rates (or the successor thereto if the ICE Benchmark Administration is no longer making a LIBO Rate available) for deposits in Dollars (as set forth by any service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration (or the successor thereto if the ICE Benchmark Administration is no longer making a LIBO Rate available) as an authorized vendor for the purpose of displaying such rates). Any change in such rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, as the case may be. If the ABR is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14), then the ABR shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

"ABR Borrowing" shall mean a Borrowing comprised of ABR Term Loans.

"ABR Term Loan" shall mean any Term Loan bearing interest at a rate determined by reference to the ABR in accordance with the provisions of Article II.

"Additional Lender" shall mean, at any time, any bank, financial institution or other institutional lender or investor that, in any case, is not an existing Lender and to whom an assignment of Term Loans would be permitted at such time pursuant to Section 9.04, and that agrees to provide any portion of any (a) Term Facility Increase in accordance with Section 2.22, (b) Incremental Term Facility in accordance with Section 2.22, or (c) Specified Refinancing Debt in accordance with Section 2.25.

"Adjusted LIBO Rate" shall mean, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum equal to (a) the LIBO Rate in effect for such Interest Period divided by (b) one minus the Statutory Reserves applicable to such Eurocurrency Borrowing, if any; provided that, with respect to the Initial Term Loans, if the Adjusted LIBO Rate shall be less than 1.00%, such interest rate shall be deemed to be 1.00%.

"Administrative Agent" shall have the meaning assigned to such term in the introductory paragraph of this Agreement, together with its successors and assigns.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in the form of Exhibit B or such other form supplied by the Administrative Agent.

"Affected Financial Institution" shall mean (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified.

"Agents" shall mean the Administrative Agent and the Collateral Agent.

"Agreement" shall have the meaning assigned to such term in the introductory paragraph of this Agreement, as may be amended, restated, supplemented or otherwise modified from time to time.

"All-in Yield" shall mean, as to any Indebtedness, the yield thereon payable to all Lenders (or other lenders, as applicable) providing such Indebtedness in the primary syndication thereof, as reasonably determined by the Administrative Agent in consultation with the Borrower, whether in the form of interest rate, margin, original issue discount, up-front fees, rate floors or otherwise; provided that (x) original issue discount and up-front fees shall be equated to interest rate assuming a 4-year life to maturity (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness) and (y) "All-in Yield" shall not include arrangement, commitment, underwriting, structuring, unused line, advisory, ticking or similar fees (regardless of how such fees are computed and whether shared or paid, in whole or in part, with or to any or all lenders) or consent or amendment fees or and any similar fees (regardless of how such fees are computed and whether shared or paid, in whole or in part, with or to any or all lenders) or any other fees not generally paid ratably to all lenders of such Indebtedness.

"Anti-Corruption Laws" shall have the meaning assigned to such term in Section 3.26.

"Applicable Indebtedness" shall have the meaning assigned to such term in the definition of Weighted Average Life to Maturity.

"Applicable Margin" shall mean, for any day, with respect to the Initial Term Loans, 6.00% per annum in the case of any Eurocurrency Term Loan and 5.00% per annum in the case of any ABR Term Loan (it being understood that (x) the Applicable Margin in respect of any Tranche of Extended Term Loans shall be the applicable percentages per annum set forth in the relevant Extension Amendment, (y) the Applicable Margin in respect of any Tranche of Incremental Term Loans shall be the applicable percentages per annum set forth in the relevant Incremental Amendment and (z) the Applicable Margin in respect of any Tranche of Specified Refinancing Term Loans shall be the applicable percentages per annum set forth in the relevant Refinancing Amendment).

"Applicable Premium" shall mean, with respect to the aggregate principal amount of Initial Term Loans being prepaid pursuant to Section 2.11(a) or Section 2.11(b) (in the case of Section 2.11(b), solely with respect to prepayments made with Net Proceeds described in clause (b) of the definition thereof), on any applicable prepayment date, the excess (to the extent positive) of (a) the present value at such prepayment date of (i) 100.00% of the aggregate principal amount of all such Initial Term Loans so prepaid on such date, *plus* (ii) all required remaining scheduled interest payments due on such prepaid Initial Term Loans to and excluding the second anniversary of the Closing Date (excluding accrued but unpaid interest to, but excluding, the prepayment date) (assuming that for such period the prepaid Initial Term Loans will bear interest based on the Adjusted LIBO Rate (or the applicable replacement index rate with respect thereto adopted pursuant to this Agreement) in effect for one-month Interest Periods as of the date of the applicable notice of prepayment (for the avoidance of doubt, subject to the interest rate "floor" set forth in the definition of Adjusted LIBO Rate)), computed using a discount rate equal to the Applicable Treasury Rate at such prepayment date plus 50 basis points, *over* (b) the outstanding aggregate principal amount of such Initial Term Loans so prepaid on such applicable prepayment date, in each case, as calculated in a manner that is reasonably agreed between the Administrative Agent and the Borrower.

"Applicable Treasury Rate" shall mean the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days (but not more than five Business Days) prior to the prepayment date (or, if such statistical release is not so published or available, any publicly available source of similar market data selected by the Borrower in good faith)) most nearly equal to the period from the prepayment date to the second anniversary of the Closing Date; *provided*, *however*, that if the period from the prepayment date to the second anniversary of the Closing Date is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Applicable 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 applicable date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

"Approved Fund" shall have the meaning assigned to such term in Section 9.04(b)(ii).

"Arrangers" shall mean Citibank, N.A. (or an Affiliate thereof), BofA Securities, Inc., PNC Capital Markets LLC, U.S. Bank National Association and Wells Fargo Securities, LLC in their capacities as joint lead arrangers and joint bookrunners.

"Asset Sale" shall mean any Disposition (whether in a single transaction or a series of related transactions) (including any sale and leaseback of assets, any lease of Real Property and any disposition of property to a Divided LLC or Divided LP pursuant to an LLC Division or LP Division, respectively, or any allocation of assets to any Series LLC or Series LP) to any person of, any asset or assets of the Borrower or any Subsidiary.

"Assignee" shall have the meaning assigned to such term in Section 9.04(b)(i).

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 9.04), in the form of Exhibit A or such other form (including electronic documentation generated by use of an electronic platform) as shall be approved by the Administrative Agent and reasonably satisfactory to the Borrower.

"Assignor" shall have the meaning assigned to such term in Section 9.04(h).

"Bail-In Action" shall mean 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" shall mean (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation 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).

"Benefit Plan" shall mean any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code or (c) any person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"BHC Act Affiliate" shall have the meaning assigned to such term in Section 9.23.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" shall mean, as to any person, the board of directors or other governing body of such person.

"Borrower" shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

"Borrower Materials" shall have the meaning assigned to such term in Section 9.17(a).

"Borrowing" shall mean a group of Loans of a single Type and made on a single date and, in the case of Eurocurrency Term Loans, as to which a single Interest Period is in effect.

"Borrowing Minimum" shall mean $5,000,000.

"Borrowing Multiple" shall mean $1,000,000.

"Borrowing Request" shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit D or another form approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent).

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurocurrency Term Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in deposits in Dollars in the London interbank market.

"Capital Expenditures" shall mean, for any person in respect of any period, the aggregate of all expenditures incurred by such person during such period that, in accordance with GAAP, are or should be included in "additions to property, plant or equipment" or similar items reflected in the statement of cash flows of such person.

"Capital Stock" shall mean (i) in the case of a corporation, corporate stock, (ii) in the case of an association or business entity, any and all shares, interests, participations, rights, or other equivalents (however designated) of corporate stock, (iii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited), and (iv) 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 (it being understood and agreed, for the avoidance of doubt, that "cash-settled phantom appreciation programs" in connection with employee benefits that do not require a dividend or distribution shall not constitute Capital Stock).

"Capitalized Lease Obligations" shall mean, at the time any determination thereof is to be made, the amount of the liability in respect of a Finance 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 Capitalized Lease Obligations shall, for the avoidance of doubt, exclude all Non-Finance Lease Obligations.

"Capitalized Software Expenditures" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and its 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 the Borrower and its Subsidiaries.

"Cash Equivalents" shall mean:

(1) Dollars;

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

(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 12 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurocurrency or 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 $500,000,000 in the case of U.S. banks and $100,000,000 (or the 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-1 by Moody's or at least A-1 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 12 months after the date of acquisition thereof;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-1 or A-1 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 12 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 12 months or less from the date of acquisition;

(10) Investments with average maturities of 12 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);

(11) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (10) above; and

(12) credit card receivables and debit card receivables so long as same are payable by a financial institution and are considered "cash equivalents" in accordance with GAAP and are so reflected on the applicable Group Member's balance sheet.

In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (12) 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 (12) 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 Subsidiary in the ordinary course of business, are expected by the Borrower to be converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event are so converted within ten (10) Business Days following the receipt of such amounts.

"Cash Management Agreement" shall mean any agreement to provide to the Borrower or any Subsidiary cash management services for collections, treasury management services (including controlled disbursement, overdraft, automated clearing house fund transfer services, return items and interstate depository network services), any demand deposit, payroll, trust or operating account relationships, commercial credit cards, merchant card, purchase or debit cards, credit or debit cards, credit card processing services, non-card e-payables services, and other cash management services, including electronic funds transfer services, lockbox services, stop payment services and wire transfer services.

"Cash Management Bank" shall mean (i) any person that at the time it enters into a Cash Management Agreement, is a Lender or an Agent or an Affiliate or branch of a Lender or an Agent or (ii) any other person from time to time designated in writing by the Borrower and approved in writing by the Administrative Agent (which approval shall not be unreasonably withheld, conditioned or delayed), in each case, in its capacity as a party to such Cash Management Agreement; provided that no such person shall be considered a Cash Management Bank or a Secured Party until such time as it shall have delivered written notice to the Administrative Agent that such person is a Cash Management Bank and a Secured Party.

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

"Change in Control" shall mean an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding (x) any employee benefit plan of such person or its Subsidiaries and any person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and (y) any Holding Company) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the total voting power of the Voting Stock of the Borrower, in each case, other than in connection with any transaction or series of transactions in which the Borrower shall become the Wholly Owned Subsidiary of a Holding Company;

(b) The RMR Group LLC (or any Affiliate thereof) ceases to provide management services to the Borrower pursuant to the Shared Services Agreement; or

(c) a "change of control" or similar provision under any agreement or instrument evidencing any Material Indebtedness of the Borrower or any Subsidiary has occurred obligating the Borrower or any Subsidiary to repurchase, redeem, repay or convert into cash all or any part of the Indebtedness provided for therein.

provided that notwithstanding anything to the contrary in this definition or any provision of the Exchange Act, (A) a person or group shall be deemed not to beneficially own securities subject to an equity or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the securities in connection with the transactions contemplated by such agreement, (B) if any group includes any Holding Company, the issued and outstanding Equity Interests of the Borrower, directly or indirectly owned by any Holding Company that is part of such group shall not be treated as being beneficially owned by such group or any other member of such group for purposes of this definition and (C) a person or group will be deemed not to beneficially own the Equity Interests of another person as a result of its ownership of Equity Interests or other securities of such other person's parent (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock of such person's parent.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in law, treaty, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender (or, for purposes of Section 2.15(b), by any Lending Office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date; provided, however, that notwithstanding anything herein to the contrary, (x) all requests, rules, guidelines or directives under or issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act, all interpretations and applications thereof and any compliance by a Lender with any request or directive relating thereto and (y) all requests, rules, guidelines or directives promulgated under or in connection with, all interpretations and applications of, or any compliance by a Lender with any request or directive relating to International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case under clauses (x) and (y) be deemed to be a "Change in Law".

"Charge" shall mean any charge, expense, cost, accrual or reserve of any kind.

"Closing Date" shall mean December 14, 2020.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean all the "Collateral" as defined in any Security Document and shall also include all other property that is subject to any Lien in favor of the Collateral Agent or any Subagent for the benefit of the Secured Parties pursuant to any Security Document.

"Collateral Agent" shall have the meaning assigned to such term in the introductory paragraph of this Agreement, together with its successors and permitted assigns.

"Collateral Agent Fee Letter" shall mean that certain letter agreement, dated December 14, 2020, by and between the Borrower and the Collateral Agent.

"Collateral and Guarantee Requirement" shall mean the requirement that (in each case subject to Section 5.10):

(a) on the Closing Date, (i) the Collateral Agent shall have received from the Borrower and each Subsidiary Loan Party, a counterpart of the Security Agreement and (ii) the Administrative Agent shall have received from each Subsidiary Loan Party, a counterpart of the Subsidiary Guarantee Agreement, in each case duly executed and delivered on behalf of such person;

(b) on the Closing Date, (i) all outstanding Equity Interests directly owned by the Loan Parties, other than Excluded Securities and other Equity Interests constituting Excluded Assets, shall have been pledged on a first-priority basis (subject to any non-consensual Permitted Liens) to the Collateral Agent pursuant to the Security Agreement, and (ii) the Collateral Agent shall have received certificates or other instruments (if any) representing such Equity Interests, together with stock powers or other instruments of transfer (if any) with respect thereto endorsed in blank;

(c) on the Closing Date, except to the extent otherwise provided hereunder or under any Security Document, the Loan Obligations and the Guarantees under the Subsidiary Guarantee Agreement shall have been secured by a perfected security interest in substantially all tangible and intangible assets of the Borrower and each Subsidiary Loan Party (including, without limitation, accounts receivable, inventory, equipment, investment property, Intellectual Property, intercompany receivables and other general intangibles (including contract rights), and proceeds of the foregoing) other than Excluded Assets, in each case, with the priority required by the ABL/Term Intercreditor Agreement and the Security Documents;

(d) in the case of any person that becomes a Subsidiary Loan Party after the Closing Date, (i) the Collateral Agent shall have received a supplement to the Security Agreement and (ii) the Administrative Agent shall have received a supplement to the Subsidiary Guarantee Agreement, in each case, duly executed and delivered on behalf of such Subsidiary Loan Party; and

(e) after the Closing Date, (x) all outstanding Equity Interests of any person that becomes a Subsidiary Loan Party after the Closing Date and (y) all Equity Interests directly acquired by the Borrower or a Subsidiary Loan Party after the Closing Date, in each case, other than Excluded Securities and other Equity Interests constituting Excluded Assets, shall have been pledged pursuant to the Security Agreement, together with stock powers or other instruments of transfer (if any) with respect thereto endorsed in blank; and

(f) after the Closing Date, except to the extent otherwise provided hereunder or under any Security Document, the Loan Obligations and the Guarantees under the Subsidiary Guarantee Agreement of any person that becomes a Subsidiary Loan Party after the Closing Date shall have been secured by a perfected security interest in substantially all tangible and intangible assets of such Subsidiary Loan Party (including, without limitation, accounts receivable, inventory, equipment, investment property, Intellectual Property, intercompany receivables and other general intangibles (including contract rights), and proceeds of the foregoing) other than Excluded Assets, in each case, with the priority required by the ABL/Term Intercreditor Agreement and the Security Documents.

Notwithstanding the foregoing and any other provision of the Loan Documents, (a) no actions in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any Collateral or to perfect any security interest in such Collateral, including any intellectual property registered 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 or any requirement to make any filings in any foreign jurisdiction, including with respect to foreign intellectual property) and (b) other than in respect of certain material debt owing to the Loan Parties (if applicable) and certificated Equity Interests owned by a Loan Party that are required to be pledged, perfection by "control" shall not be required with respect to any Collateral and there shall be no requirement to enter into any control agreement with respect to any deposit account, securities account or commodities account or contract.

"Commitment" shall mean, with respect to any Lender, such Lender's Term Loan Commitment.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Connection Income Taxes" shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Debt" at any date shall mean the sum of (without duplication) the aggregate principal amount of all Indebtedness (for the avoidance of doubt, other than obligations under Hedging Agreements and letters of credit or bank guarantees, to the extent undrawn) consisting of Indebtedness for borrowed money of the Borrower and the Subsidiaries determined on a consolidated basis on such date in accordance with GAAP.

"Consolidated Depreciation and Amortization Expense" means, with respect to the Borrower and its Subsidiaries for any period, the total amount of depreciation and amortization expense of the Borrower and its 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 the Borrower and its Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated First Lien Secured Debt" at any date shall mean Consolidated Debt as of such date that is secured by a Lien on the Collateral on a first priority basis (but without regard to the control of remedies). For the avoidance of doubt, any Indebtedness under the ABL Credit Agreement shall constitute Consolidated First Lien Secured Debt.

"Consolidated Interest Expense" shall mean, with respect to the Borrower and its Subsidiaries for any period, the sum of (without duplication) (a) consolidated total interest expense of the Borrower and its Subsidiaries for such period, whether paid or accrued and whether or not capitalized (including, without limitation (and without duplication), amortization of any debt issuance cost and/or original issue discount, any premium paid to obtain payment, financial assurance or similar bonds, any interest capitalized during construction, any non-cash interest payment, the interest component of any deferred payment obligation, the interest component of any payment under any Capitalized Lease Obligation (regardless of whether accounted for as interest expense under GAAP), any commission, discount and/or other fee or Charge owed with respect to any letter of credit and/or bankers' acceptance, any fee and/or expense paid to the Administrative Agent or the Collateral Agent in connection with its services hereunder, any other bank, administrative agency (or trustee) and/or financing fee and any cost associated with any surety bond in connection with financing activities (whether amortized or immediately expensed)), plus (b) any cash dividend paid or payable in respect of Disqualified Stock during such period other than to the Borrower or any of its Subsidiaries, plus (c) any net losses or obligations arising from any interest rate Hedging Agreement and/or other interest rate derivative financial instrument issued by the Borrower or any of its Subsidiaries for the benefit of the Borrower or its Subsidiaries, in each case determined on a consolidated basis for such period. For purposes of this definition, interest in respect of any Capitalized Lease Obligation shall 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" shall mean, with respect to any person, for any period, the Net Income (or loss) of such person and its subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication:

(a) the income (or loss) of Unrestricted Subsidiaries and, solely for the purpose of determining Excess Cash Flow, any person (other than a subsidiary of the subject person) accounted for by the equity method of accounting, in each case, except to the extent of dividends or distributions or other payments that are actually paid in Cash Equivalents to the subject person or a subsidiary thereof, whether paid in respect of income, return of capital or dividend for such period or any prior periods,

(b) any gain or Charge attributable to any asset disposition (including asset retirement costs and including abandonments of assets) or of returned surplus assets outside the ordinary course of business,

(c) any gain or Charge from (A) any extraordinary item (as determined in good faith by such person) and/or (B) any nonrecurring or unusual item (as determined in good faith by such person),

(d) any write-off or amortization made of any deferred financing cost and/or premium paid or other Charge, in each case attributable to the early extinguishment of Indebtedness (and the termination of any associated Hedging Agreement),

(e) (i) any Charge incurred as a result of, in connection with or pursuant to any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement, any pension plan (including any post-employment benefit scheme which has been agreed with the relevant pension trustee), any stock subscription or shareholder agreement, any employee benefit trust, any employment benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement) and (ii) any Charge incurred in connection with the rollover, acceleration or payout of Equity Interests held by management of the Borrower and/or any Subsidiary, in each case, to the extent that any cash Charge is funded with net cash proceeds contributed to the relevant person as a capital contribution or as a result of the sale or issuance of Qualified Equity Interests,

(f) any Charge that is established, adjusted and/or incurred, as applicable, or that is required to be so established, adjusted or incurred, as applicable, (i) as a result of an Investment or any other acquisition or the Transactions, in each case in accordance with GAAP or (ii) as a result of any change in, or the adoption or modification of, accounting principles and/or policies in accordance with GAAP,

(g) (A) the effects of adjustments (including the effects of such adjustments pushed down to the relevant person and its subsidiaries) in component amounts required or permitted by GAAP (including in the inventory, property and equipment, leases, rights fee arrangements, software, goodwill, intangible asset, in-process research and development, deferred revenue, advanced billing and debt line items thereof), resulting from the application of purchase accounting in relation to any consummated acquisition or recapitalization accounting or the amortization or write-off of any amounts thereof, net of Taxes, and (B) the cumulative effect of changes in, or the adoption or modification of, accounting principles or policies made in such period in accordance with GAAP which affect Consolidated Net Income,

(h) solely for the purpose of calculating Excess Cash Flow, the income or loss of any person accrued prior to the date on which such person becomes a subsidiary of such person or is merged into or consolidated with such person or any subsidiary of such person or the date that such other person's assets are acquired by such person or any subsidiary of such person,

(i) (i) any unrealized gain or loss in respect of (x) any obligation under any Hedging Agreement as determined in accordance with GAAP and/or (y) any other derivative instrument pursuant to, in the case of this clause (y), Financial Accounting Standards Board's Accounting Standards Codification No. 815-Derivatives and Hedging, (ii) any realized or unrealized foreign currency exchange gain or loss (including any currency re-measurement of Indebtedness, any net gain or loss resulting from Hedging Agreements for currency exchange risk resulting from any intercompany Indebtedness, any foreign currency translation or transaction or any other currency-related risk),

(j) purchase price holdbacks, earn-outs and other contingent consideration obligations (including to the extent accounted for as bonuses, compensation or otherwise (and including deferred performance incentives in connection with Permitted Acquisitions or other Investments permitted hereunder whether or not a service component is required from the transferor or its related party)) and, in each case, adjustments thereof and purchase price adjustments,

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

(l) solely for the purpose of determining Excess Cash Flow, the Net Income for such period of any subsidiary (other than any Loan Party) to the extent that the declaration or payment of dividends or similar distributions by that 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 subsidiary or its equityholders, 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 Equivalents to such person or a subsidiary thereof in respect of such period, to the extent not already included therein.

In addition, to the extent not already included in the Consolidated Net Income of such person and its subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any Charges incurred by such person or its 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; *provided* that such amounts are actually received or reimbursed within 365 days (with a deduction for any amounts included in Consolidated Net Income to the extent not actually received or reimbursed within 365 days).

"Consolidated Total Assets" shall mean, as of any date of determination, the total assets of the Borrower and the Subsidiaries without giving effect to any impairment or amortization of the amount of intangible assets since the Closing Date, determined on a consolidated basis in accordance with GAAP, as set forth on the consolidated balance sheet of the Borrower as of the last day of the fiscal quarter most recently ended for which financial statements have been (or were required to be) delivered pursuant to Section 4.01(g), 5.04(a) or 5.04(b), as applicable, calculated on a pro forma basis after giving effect to any acquisition or Disposition of a person or assets that may have occurred on or after the last day of such fiscal quarter.

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

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and "Controlling" and "Controlled" shall have meanings correlative thereto.

"Covered Entity" shall have the meaning assigned to such term in Section 9.23.

"Covered Party" shall have the meaning assigned to such term in Section 9.23.

"Credit Agreement Refinanced Debt" has the meaning specified in the definition of "Credit Agreement Refinancing Indebtedness".

"Credit Agreement Refinancing Indebtedness" shall mean any (a) Permitted Pari Passu Secured Refinancing Debt, (b) Permitted Junior Refinancing Debt or (c) other Indebtedness incurred (in the case of this clause (c)) pursuant to a Refinancing Amendment, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) to Refinance, in whole or part, any Tranche of existing Loans ("Credit Agreement Refinanced Debt"); provided that (i) such Credit Agreement Refinancing Indebtedness is in an original aggregate outstanding principal amount (or accreted value, if applicable) not greater than the aggregate outstanding principal amount (or accreted value, if applicable) of the Credit Agreement Refinanced Debt plus an amount equal to unpaid accrued interest, fees and premium (including tender premium) and penalties (if any) thereon plus upfront fees and original issue discount and other reasonable and customary fees and expenses incurred or paid in connection with such Refinancing, (ii) such Indebtedness shall have a maturity date that is no earlier than the maturity date of the applicable Credit Agreement Refinanced Debt and a Weighted Average Life to Maturity equal to or greater than the applicable Credit Agreement Refinanced Debt as of the date that such Credit Agreement Refinancing Indebtedness is incurred, (iii) the terms and conditions of such Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums and terms) are, when taken as a whole, (x) substantially identical to or (y) not materially more favorable to the lenders or holders providing such Indebtedness, in the reasonable good faith judgment of the Borrower, than those applicable to the Credit Agreement Refinanced Debt when taken as a whole or as otherwise reasonably satisfactory to the Administrative Agent (other than covenants or other provisions applicable only to periods after the Latest Maturity Date of the outstanding Term Loans at the time of incurrence, issuance or obtainment of such Credit Agreement Refinancing Indebtedness) (it being understood that such Credit Agreement Refinancing Indebtedness shall not include any additional financial maintenance covenants, unless (i) such additional financial maintenance covenant is applicable only to periods after the Latest Maturity Date at the time of incurrence, issuance or obtainment of such Credit Agreement Refinancing Indebtedness or (ii) such additional financial maintenance covenant is also added for the benefit of any corresponding then outstanding Tranche of Term Loans), (iv) the terms of such Credit Agreement Refinancing Indebtedness in the form of notes do not provide for any amortization or any mandatory redemption or prepayment provisions or rights prior to the Latest Maturity Date in effect at the time of the issuance thereof (other than customary prepayments, repurchases or redemptions or offers to prepay, redeem or repurchase or mandatory prepayments upon a change of control, fundamental change, asset sale or casualty or condemnation event, and customary acceleration rights after an event of default, which shall be on no greater than a pro rata basis with other Indebtedness secured on a pari passu basis with such Credit Agreement Refinancing Indebtedness in the case of an asset sale or casualty or condemnation event), (v) if the Credit Agreement Refinanced Debt is subordinated in right of security to the Loans, then such Credit Agreement Refinancing Indebtedness shall be subordinated in right of security to the Loans on the same basis or shall be unsecured, (vi) if the Credit Agreement Refinanced Debt is subordinated in right of payment to the Loans, then such Credit Agreement Refinancing Indebtedness shall be subordinated in right of payment to the Loans on the same basis or be unsecured and junior in right of payment to the Loans, (vii) if the Credit Agreement Refinanced Debt is unsecured, then such Credit Agreement Refinancing Indebtedness shall be unsecured, (viii) any mandatory prepayments of (I) Permitted Junior Refinancing Debt may not be made except to the extent that such prepayments are not prohibited hereunder and to the extent required hereunder or pursuant to the terms of any Permitted Pari Passu Secured Refinancing Debt, first made or offered to the holders of the Term Loans and any such Permitted Pari Passu Secured Refinancing Debt and (II) Permitted Pari Passu Secured Refinancing Debt in respect of events described in Section 2.11(b) and (c) (in the case of Section 2.11(b), solely with respect mandatory prepayments on account of a Prepayment Event) may be made on a pro rata basis or less than a pro rata basis (but not greater than a pro rata basis) with the Term Loans, (ix) such Credit Agreement Refinanced Debt shall be repaid, defeased or satisfied and discharged, all accrued interest, fees and premiums (if any) in connection therewith shall be paid in full and all unutilized commitments thereunder shall be terminated, substantially concurrently with the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained, (x) such Credit Agreement Refinancing Indebtedness shall not be secured by Liens on any assets that are not Collateral and (xi) such Credit Agreement Refinancing Indebtedness shall have no borrowers or guarantors other than the Loan Parties.

"Cumulative Credit" shall mean, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis equal to, without duplication:

(a) the greater of $25,000,000 and 25% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period, plus

(b) the Retained Excess Cash Flow Amount, plus

(c) the aggregate amount of any Declined Proceeds, plus

(d) the aggregate amount of contributions as common equity to the capital of the Borrower and the amount of net cash proceeds from the sale or issuance of Equity Interests of the Borrower (other than (i) Disqualified Stock or (ii) to the extent such amounts have both increased another basket hereunder and have been previously utilized under such basket) received by the Borrower after the Closing Date and on or prior to such time, plus

(e) the net cash proceeds of issuances or incurrences of Indebtedness or Disqualified Stock after the Closing Date of the Borrower or any Subsidiary owed or issued, as applicable, to a person other than the Borrower or any Subsidiary which shall have been subsequently exchanged for or converted into Equity Interests of the Borrower (other than (i) Disqualified Stock or (ii) to the extent such amounts have both increased another basket hereunder and have been previously utilized under such basket), plus

(f) the net cash proceeds of any Dispositions of Investments made pursuant to Section 6.03(e)(Y) after the Closing Date prior to such time, plus

(g) an amount equal to any returns (including dividends, interest, distributions, returns of principal, profits on sale or other disposition, repayments, repurchases, redemptions, income and similar amounts) actually received by the Borrower or any Subsidiary in respect of any Investments made pursuant to Section 6.03(e)(Y) after the Closing Date prior to such time, but excluding any return, profit, distribution or similar amount paid by an Unrestricted Subsidiary to the Borrower or any Subsidiary in respect of the payment of any Tax liability of such Unrestricted Subsidiary, plus

(h) the Investments of the Borrower or any Subsidiary made pursuant to Section 6.03(e)(Y) after the Closing Date prior to such time in any Unrestricted Subsidiary that has been re-designated as a Subsidiary or that has been merged or consolidated with or into the Borrower or any Subsidiary (up to the lesser of (x) the fair market value (as determined in good faith by the Borrower) of the Investments of the Borrower or any Subsidiary in such Unrestricted Subsidiary at the time of such re-designation or merger or consolidation and (y) the fair market value (as determined in good faith by the Borrower) of the original Investments by the Borrower or any Subsidiary in such Unrestricted Subsidiary), plus

(i) the fair market value (as determined in good faith by the Borrower) of any assets of any Unrestricted Subsidiary that have been transferred to the Borrower or any Subsidiary after the Closing Date prior to such time, minus

(j) any amounts thereof used to make Investments pursuant to Section 6.03(e)(Y) after the Closing Date prior to such time, minus

(k) any amounts thereof used to make Restricted Payments pursuant to Section 6.05(b) after the Closing Date prior to such time, minus

(l) any amount thereof used to make payments or distributions in respect of Junior Financings pursuant to Section 6.08(a)(i)(III).

"Current Assets" shall mean, as at any date of determination, the total assets of the Borrower and the Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding Cash Equivalents, amounts related to current or deferred Taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated acquisition.

"Current Liabilities" shall mean, as at any date of determination, the total liabilities of the Borrower and the Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of any Funded Debt, (B) the current portion of interest, (C) accruals for current or deferred Taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves or severance, (E) ABL Loans under the ABL Credit Agreement or any other revolving loans, swingline loans and letter of credit obligations under any other revolving credit facility, (F) the current portion of any Capitalized Lease Obligation, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) the current portion of any other long-term liabilities, (J) accrued litigation settlement costs, (K) any liabilities in respect of Hedging Agreements, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to any consummated acquisition, (L) management fees payable, (M) non-cash compensation costs and expenses and (N) any other liabilities that are not Indebtedness and will not be settled in Cash Equivalents during the next succeeding twelve month period after such date.

"Debtor Relief Laws" shall mean the U.S. Bankruptcy Code, 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 of America or other applicable jurisdictions from time to time in effect.

"Declined Proceeds" shall have the meaning assigned to such term in Section 2.10(c).

"Declining Lender" shall have the meaning assigned to such term in Section 2.10(c).

"Default" shall mean any event or condition that upon notice, lapse of time or both would constitute an Event of Default.

"Default Right" shall have the meaning assigned to such term in Section 9.23.

"Designated Non-Cash Consideration" shall mean the fair market value (as determined in good faith by the Borrower) of non-cash consideration received by the Borrower or one of its Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth such valuation, less the amount of Cash Equivalents received in connection with a subsequent disposition of, or other receipt of Cash Equivalents in respect of, such Designated Non-Cash Consideration.

"Designation Date" shall have the meaning assigned to such term in Section 2.24(f).

"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.

"Dispose" or "Disposed of" shall mean to convey, sell, lease, sell and leaseback, assign, farm-out, transfer or otherwise dispose of any property, business or asset (including to dispose of any property, business or asset to a Divided LLC or a Divided LP pursuant to an LLC Division or LP Division, as applicable). The term "Disposition" shall have a correlative meaning to the foregoing.

"Disqualified Stock" shall mean, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests and cash in lieu of fractional shares), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control, fundamental change, asset sale or casualty event so long as any rights of the holders thereof upon the occurrence of a change of control, fundamental change, asset sale or casualty event shall be subject to the occurrence of the Termination Date), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests and cash in lieu of fractional shares), in whole or in part (except as a result of a change of control, fundamental change, asset sale or casualty event so long as any rights of the holders thereof upon the occurrence of a change of control, fundamental change, asset sale or casualty event shall be subject to the occurrence of the Termination Date), (c) in the case of Equity Interests of the Borrower, provides for the payment of dividends in cash that are scheduled as of the issuance of such Equity Interests or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the Latest Maturity Date in effect at the time of issuance thereof (provided that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock). Notwithstanding the foregoing: (i) any Equity Interests issued to any employee or to any plan for the benefit of employees of the Borrower or the Subsidiaries or by any such plan to such employees shall not constitute Disqualified Stock solely because they may be required to be repurchased by the Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability and (ii) any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

"Divided LLC" shall mean a limited liability company which has been formed upon the consummation of an LLC Division.

"Divided LP" shall mean a limited partnership which has been formed upon the consummation of an LP Division.

"Dollars" or "$" shall mean lawful money of the United States of America.

"Domestic Subsidiary" shall mean any Subsidiary that is not a Foreign Subsidiary.

"EBITDA" shall mean, with respect to the Borrower and its Subsidiaries for any period, the Consolidated Net Income of the Borrower and its Subsidiaries for such period:

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

(a) Consolidated Interest Expense for such period; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise, excise, value added and similar taxes, property taxes and similar taxes, and foreign withholding taxes paid or accrued during such period (including any future taxes or 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"; *plus*

(c) (i) Consolidated Depreciation and Amortization Expense for such period, (ii) all impairment Charges and (iii) all asset write-offs and/or write-downs; *plus*

(d) any other non-cash Charges, expenses or losses, including, any non-cash expense relating to the vesting of warrants, non-cash contributions or accruals to or with respect to pension plans, deferred profit sharing or compensation plans, non-cash compensation charges, non-cash translation loss, non-cash asset retirement costs and any write offs, write downs, expenses, losses, or items (*provided* that if any such non-cash Charges represent an accrual or reserve for potential cash items in any future period, (1) the Borrower may determine not to add back such non-cash Charge in the current period and (2) to the extent the Borrower does decide to add back such non-cash Charge, the cash payment in respect thereof in such future period shall be deducted from 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 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) (x) the amount of board of director fees and management, monitoring, consulting, transaction and advisory fees and related indemnities and expenses (including reimbursements) and payments made by the Borrower for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, (y) the amount of payments made to optionholders of the Borrower in connection with, or as a result of, any distribution being made to equityholders of the Borrower, 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 and (z) any payments in the nature of compensation or expense reimbursement made to independent board members of the Borrower or any of its Subsidiaries; *plus*

(g) [reserved]; *plus*

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing 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 EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) (a) any non-cash compensation Charge and/or any other non-cash Charge arising from the granting of any stock option or similar arrangement (including any profits interest), the granting of any stock appreciation right and/or similar arrangement (including any repricing, amendment, modification, substitution or change of any such stock option, stock appreciation right, profits interest or similar arrangement), (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; *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) the amount of "run-rate" cost savings, synergies (other than revenue synergies), operating expense reductions (including the termination, abandonment or discontinuance of operations and product lines) and operating improvements related to mergers and other business combinations, acquisitions, divestitures, dispositions or other Specified Transactions, restructurings, cost savings initiatives, operational changes and other initiatives (including, in each case, as a result of acquisitions occurring, or committed to, prior to the Closing Date) 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) no later than 12 months after such merger or other business combination, acquisition, divestiture, disposition or other Specified Transaction, restructuring, cost savings initiative, operational change or other initiative is consummated (or undertaken or implemented prior to consummation of the acquisition or other applicable transaction), in each case, calculated (1) on a pro forma basis as though such cost savings, synergies, operating expense reductions or operating improvements had been realized on the first day of such period and (2) 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, operating expense reductions and operating improvement adjustments made pursuant to Section 1.06); *provided* that such cost savings, synergies, operating expense reductions and operating improvements are reasonably identifiable and factually supportable as certified in a certificate of a Financial Officer of the Borrower; *provided*, *further* that the aggregate amount of such "run-rate" cost savings, synergies, operating expense reductions and operating improvements added back pursuant to this clause (k) in any Test Period, together with the amount of any increase for such Test Period in EBITDA as a result of any "run-rate" cost savings, synergies, operating expense reductions and operating improvements pursuant to Section 1.06(c), shall not exceed 25% of EBITDA of the Borrower and its Subsidiaries, calculated prior to giving effect to all such add-backs, adjustments and increases, for such Test Period on a pro forma basis; *plus*

(l) (A) Transaction Expenses or (B) Charges incurred in connection with any transaction undertaken on, after or prior to the Closing Date (in each case, regardless of whether or not successful or consummated), and whether or not permitted under this Agreement, including any incurrence, issuance or offering of Equity Interests or Indebtedness (including such Charges related to the syndication, incurrence or amendment of the ABL Credit Agreement and the syndication and incurrence of any Loans), any Investment, any acquisition, any Asset Sale, any disposition, any recapitalization, any merger, consolidation or amalgamation, any option buyout or any repayment, redemption, refinancing, amendment or modification of Indebtedness (including any amendment or other modification of the ABL Documents, the Unsecured Bonds, other securities and any Loans) (including any amortization or write-off of debt issuance or deferred financing costs, premiums and prepayment penalties) or any similar transaction (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*); *plus*

(m) any Charge attributable to the undertaking and/or implementation of cost savings initiatives, cost rationalization programs, operating expense reductions, operating improvements and/or other synergies and similar initiatives, any integration or transition (including duplicative running costs), any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses, any Charges related to the integration, consolidation, facility opening and/or pre-opening of facilities and fixed assets (including unused warehouse space costs), inventory optimization program and/or any curtailment, any business optimization Charge (including costs and expenses relating to business optimization programs), any restructuring and integration Charge (including any Charge relating to any Tax restructuring) and any Charge related to acquisitions and adjustments to existing reserves, in each case, whether or not classified as such under GAAP, any Charge relating to the closure, consolidation or reconfiguration of any facility (including but not limited to severance, rent termination costs, moving costs and legal costs), software development costs, any systems implementation and upgrade Charge, any Charge relating to entry into a new market, any Charge relating to any strategic initiative (including the implantation of operation or reporting systems or technology initiatives), any one-time compensation, executive recruiting or consulting Charge, any signing Charge, any retention or completion bonus, severance payments, any expansion and/or relocation Charge, any Charge associated with any curtailments and modifications to any pension plan or post-retirement employee benefit plan (including any settlement of pension liabilities and Charges resulting from changes in estimates, valuations and judgments), any Charge associated with new systems design, retention Charges, any system establishment or implementation Charge and/or any project startup Charge, any upfront contract rebates and fees paid to customers, any litigation and settlement fees, costs and expenses, transition Charges and duplicative running Charges, contract termination costs, Charges incurred in connection with non-ordinary course product and intellectual property development, and Charges incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); *plus*

(n) any net loss from any disposed, abandoned, divested and/or discontinued asset, property or operation (other than (x) in the ordinary course of business (as determined in good faith by such person) and (y) at the option of the Borrower, any asset, property or operation held for sale or pending the disposal, abandonment, divestiture and/or termination thereof) for such period; *plus*

(o) payments by the Borrower and the Subsidiaries paid or accrued during such period in respect of purchase price holdbacks, earn-outs and other contingent obligations and long-term liabilities of the Borrower and the Restricted Subsidiaries (other than Indebtedness); *plus*

(p) (i) any adjustments set forth in the Information Memorandum and (ii) any adjustments in compliance with Regulation S-X of the SEC; and

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

(a) any non-cash gain 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 EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating EBITDA in accordance with this definition); *provided* that if any non-cash income or non-cash gain represents an accrual or deferred income in respect of potential cash items in any future period, the Borrower may determine not to deduct the relevant non-cash gain or income in the then-current period,

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

(c) any net income from any disposed, abandoned, divested and/or discontinued asset, property or operation (other than (x) in the ordinary course of business (as determined in good faith by such person) and (y) at the option of the Borrower, any asset, property or operation held for sale or pending the disposal, abandonment, divestiture and/or termination thereof) for such period, and

(d) the amount of any bio-fuel tax credit for such period.

Notwithstanding anything to the contrary contained herein, for purposes of determining EBITDA under this Agreement for any period that includes any of the fiscal quarters ended December 31, 2019, March 31, 2020, June 30, 2020 and September 30, 2020, EBITDA for each such fiscal quarter shall be deemed to be $19,861,000, $10,317,000, $38,083,000 and $41,467,000, respectively (the "Deemed EBITDA Numbers"), in each case, as may be subject to add-backs and adjustments (without duplication) pursuant to the definition of "EBITDA" and appropriate exclusions in the definition of "Consolidated Net Income" (for the avoidance of doubt, without duplication of add-backs, adjustments and exclusions already incorporated in arriving at such Deemed EBITDA Numbers) and Section 1.06 for the applicable period. For the avoidance of doubt, EBITDA shall be calculated, including pro forma adjustments, in accordance with Section 1.06.

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

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Environment" shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna, the workplace or as otherwise defined in any Environmental Law.

"Environmental Laws" shall mean all applicable laws (including common law), rules, regulations, codes, ordinances, orders, binding agreements, decrees, judgments or other legally binding requirements, of or entered into by or with any Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning pollution, preservation, protection or reclamation of the Environment, the generation, use, transport, management, treatment, storage, handling, labeling, Release or threatened Release of, or exposure to, any Hazardous Material or to public or employee health and safety matters.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of investigation, remediation, fines, penalties, attorney or consultant fees or indemnities) resulting from or based upon (a) non-compliance with any Environmental Law or any Environmental Permit, (b) exposure to any Hazardous Materials, (c) generation, use, handling, transportation, storage, treatment, Release or threatened Release of any Hazardous Materials, (d) any investigation, remediation, removal, clean-up or monitoring required under Environmental Laws or required by a Governmental Authority (including without limitation Governmental Authority oversight costs that the party conducting the investigation, remediation, removal, clean-up or monitoring is required to reimburse) or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permits" shall mean any and all permits, licenses, approvals, registrations, notifications, exemptions, identification numbers and other authorizations from any Governmental Authority required under Environmental Law.

"Equity Interests" of any person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity or ownership of such person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall mean (a) any Reportable Event with respect to a Plan; (b) with respect to any Plan, the failure to satisfy the minimum funding standard under Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, whether or not waived; (c) a determination that any Plan is, or is expected to be, in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (e) the incurrence by the Borrower, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (f) the receipt by the Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan under Section 4042 of ERISA; (g) the incurrence by the Borrower, a Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (h) the receipt by the Borrower, a Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower, a Subsidiary or any ERISA Affiliate of any notice, concerning the impending imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Title IV of ERISA, or in "endangered" or "critical" status, within the meaning of Section 432 of the Code or Section 305 of ERISA; (i) the conditions for imposition of a lien under Section 303(k) of ERISA or Section 430(k) of the Code shall have been met with respect to any Plan; or (j) the withdrawal of any of the Borrower, a Subsidiary or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA.

"Escrowed Proceeds" shall mean 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" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurocurrency Borrowing" shall mean a Borrowing comprised of Eurocurrency Term Loans.

"Eurocurrency Term Loan" shall mean any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

"Event of Default" shall have the meaning assigned to such term in Section 7.01.

"Excess Cash Flow" shall mean, with respect to the Borrower and its Subsidiaries for any period, an amount equal to the excess of:

(1) the sum, without duplication, of:

(a) Consolidated Net Income of the Borrower and its Subsidiaries for such period,

(b) an amount equal to the amount of all non-cash Charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash Charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,

(c) decreases in Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any such decreases or increases, as applicable, arising from acquisitions or dispositions outside the ordinary course of assets by the Borrower or any Subsidiary during such period or the application of recapitalization or purchase accounting),

(d) [reserved];

(e) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of the sum of cash taxes paid in such period, and

(f) cash receipts in respect of Hedging Agreements during such fiscal year to the extent not otherwise included in such Consolidated Net Income; over

(2) the sum, without duplication, of:

(a) an amount equal to the amount of all non-cash credits (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of any Permitted Acquisition or other investment permitted hereunder) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and all cash losses, Charges (including any reserves or accruals for potential cash charges in any future period), expenses, costs and fees excluded by virtue of the definition of "Consolidated Net Income,"

(b) without duplication of amounts deducted pursuant to clause (k) below in prior fiscal years, the amount of Capital Expenditures, Capitalized Software Expenditures or acquisitions of intellectual property accrued or made in cash during such period, in each case except to the extent financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid),

(c) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Subsidiaries (including (i) the principal component of mandatory or scheduled payments in respect of Capitalized Lease Obligations, (ii) all scheduled principal repayments of Loans, Incremental Equivalent Debt, Permitted Ratio Debt and Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), the ABL Loans, the Unsecured Bonds and any other Indebtedness outstanding pursuant to Section 6.01 (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), in each case to the extent such payments are permitted hereunder and actually made and (iii) the amount of any scheduled repayment of Term Loans pursuant to Section 2.10 or any mandatory prepayment of Term Loans pursuant to Section 2.11(b) on account of a Prepayment Event (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof), and any mandatory discharge of (I) Incremental Equivalent Debt, Permitted Ratio Debt, or Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof) and (II) any other Indebtedness outstanding pursuant to Section 6.01 (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof), pursuant to the corresponding provisions of the governing documentation thereof, in each case, to the extent required due to an Asset Sale (or other disposition) or casualty event that resulted in an increase to Consolidated Net Income for such period and not in excess of the amount of such increase, but excluding (x) all other prepayments of Initial Term Loans incurred on the Closing Date (or any other Term Loans that are secured on a pari passu basis with the Initial Term Loans incurred on the Closing Date (but without regard to the control of remedies)), (y) all prepayments of ABL Loans and all prepayments in respect of any other revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (z) payments on any Junior Financing, except in each case to the extent permitted to be paid pursuant to Section 6.08) made during such period, in each case, except to the extent financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid),

(d) an amount equal to the aggregate net non-cash gain on dispositions outside the ordinary course of business by the Borrower or any Subsidiary during such period to the extent included in arriving at such Consolidated Net Income;

(e) increases in Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) and, without duplication, increases in long-term accounts receivable and decreases in the long-term portion of deferred revenue (except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any such increases or decreases, as applicable, arising from acquisitions or dispositions outside the ordinary course by the Borrower or any Subsidiary during such period or the application of recapitalization or purchase accounting),

(f) cash payments by the Borrower and the Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income, except to the extent such payments were financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid) (which amounts, to the extent expensed in a future period, shall be included in the calculation of Excess Cash Flow for the period in which they are expensed (without duplication of any amounts included under clause (1) above)),

(g) without duplication of amounts deducted pursuant to clause (k) below in prior fiscal years, the amount of cash consideration paid by the Borrower and the Subsidiaries (on a consolidated basis) in connection with investments made during such period (including Permitted Acquisitions and investments made pursuant to Section 6.03, but excluding Investments in Cash Equivalents), except to the extent such investments were financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid),

(h) the amount of Restricted Payments paid in cash during such period, except to the extent such Restricted Payments were financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid),

(i) the aggregate amount of expenditures (including expenditures for the payment of financing fees) paid in cash during such period to the extent that such expenditures are not expensed during such period or are not deducted in calculating Consolidated Net Income (excluding expenditures specifically excluded pursuant to any other part of this clause (2) of this definition), except to the extent such expenditures were financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid) (which amounts, to the extent expensed in a future period, shall be included in the calculation of Excess Cash Flow for the period in which they are expensed (without duplication of any amounts included under clause (1) above)),

(j) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Subsidiaries during such period that are made in connection with any prepayment or redemption of Indebtedness to the extent (x) such premium, make-whole or penalty payments were not expensed during such period or are not deducted in calculating Consolidated Net Income and (y) such prepayments or redemptions reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory prepayment required by Section 2.11(c), except to the extent such payments were financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid),

(k) without duplication of amounts deducted from Excess Cash Flow in other periods, and at the option of the Borrower, (1) the aggregate consideration required to be paid in cash by the Borrower or any of its Subsidiaries pursuant to binding contracts (the "Contract Consideration") entered into prior to or during such period and (2) any planned or budgeted cash expenditures by the Borrower or any of its Subsidiaries (the "Planned Expenditures"), in the case of each of the preceding clauses (1) and (2), relating to Permitted Acquisitions or other investments, Capital Expenditures, acquisitions of intellectual property or any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid, in each case, to be consummated or made, as applicable, during the period of four consecutive fiscal quarters of the Borrower following the end of such period (except to the extent financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities)of the Borrower or any Subsidiary (unless such Indebtedness has been repaid)); *provided* that to the extent that the aggregate amount (excluding in each case any amount financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid)) of such Permitted Acquisitions or other investments, Capital Expenditures, acquisitions of intellectual property or permitted scheduled payments of Indebtedness that were permitted by the terms of this Agreement to be incurred and paid during such following period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures (excluding in each case any amount financed with the proceeds of Funded Debt (other than any intercompany Indebtedness or any Indebtedness under the ABL Credit Agreement or any other revolving credit facilities) of the Borrower or any Subsidiary (unless such Indebtedness has been repaid)), the amount of such shortfall shall be added to the calculation of Excess Cash Flow, at the end of such period of four consecutive fiscal quarters,

(l) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period, to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(m) cash expenditures in respect of Hedging Agreements during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income, and

(n) payments during such period in respect of purchase price holdbacks, earn-outs and other contingent obligations and long-term liabilities of the Borrower and the Restricted Subsidiaries (other than Indebtedness), to the extent not already deducted from Consolidated Net Income.

"Excess Cash Flow Period" shall mean each fiscal year of the Borrower, commencing with the fiscal year of the Borrower ending in December 2021.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Assets" shall have the meaning assigned to such term in the Security Agreement.

"Excluded Indebtedness" shall mean all Indebtedness permitted to be incurred under Section 6.01 other than any Credit Agreement Refinancing Indebtedness and any Specified Refinancing Debt.

"Excluded Securities" shall mean any of the following:

(a) any Equity Interests with respect to which the Administrative Agent and the Borrower reasonably agree that the cost or other consequences of pledging such Equity Interests in favor of the Secured Parties under the Security Documents are likely to be excessive in relation to the value to be afforded thereby;

(b) any Equity Interests to the extent the pledge thereof would be prohibited by any Requirement of Law after giving effect to the anti-non-assignment provisions of the Uniform Commercial Code of any applicable jurisdiction;

(c) any Equity Interests of any person that is not a Wholly Owned Subsidiary;

(d) any Equity Interests of a joint venture to the extent (A) that a pledge thereof to secure the Loan Obligations is prohibited by (i) any applicable organizational documents, joint venture agreement or shareholder agreement or similar contractual obligation or (ii) any other contractual obligation with an unaffiliated third party not in violation of Section 6.08(b) binding on such Equity Interests to the extent in existence on the Closing Date or on the date of acquisition thereof and not entered into in contemplation thereof (other than, in this subclause (A)(ii) non-assignment provisions which are ineffective under Article 9 of the Uniform Commercial Code or other applicable Requirements of Law), (B) any organizational documents, joint venture agreement or shareholder agreement (or other contractual obligation referred to in subclause (A)(ii) above) prohibits such a pledge without the consent of any other party; provided that this clause (B) shall not apply if (1) such other party is a Loan Party or a Wholly Owned Subsidiary or (2) consent has been obtained to consummate such pledge (it being understood that the foregoing shall not be deemed to obligate the Borrower or any Subsidiary to obtain any such consent) and shall only apply for so long as such organizational documents, joint venture agreement or shareholder agreement or replacement or renewal thereof is in effect, or (C) a pledge thereof to secure the Loan Obligations would give any other party (other than a Loan Party or a Wholly Owned Subsidiary) to any organizational documents, joint venture agreement or shareholder agreement governing such Equity Interests (or other contractual obligation referred to in subclause (A)(ii) above) the right to terminate its obligations thereunder (other than, in the case of other contractual obligations referred to in subclause (A)(ii) non-assignment provisions which are ineffective under Article 9 of the Uniform Commercial Code or other applicable Requirement of Law);

(e) any Equity Interests of any Unrestricted Subsidiary;

(f) Equity Interests of any CFC or FSHCO, other than 65% of the issued and outstanding voting Equity Interests and 100% of the issued and outstanding non-voting Equity Interests of any CFC or FSHCO that is held by the Borrower or any Subsidiary Loan Party;

(g) Equity Interests of TA Operating Montana LLC; and

(h) any Margin Stock;

provided that, to the extent that any such Equity Interests constitute collateral in respect of the ABL Documents, then such Equity Interests shall not constitute Excluded Securities but instead shall constitute Collateral under the Loan Documents.

"Excluded Subsidiary" shall mean any of the following:

(a) each Immaterial Subsidiary,

(b) each Subsidiary that is not a Wholly Owned Subsidiary (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary),

(c) each Subsidiary that is prohibited from Guaranteeing the Loan Obligations by any Requirement of Law or that would require consent, approval, license or authorization of a Governmental Authority to Guarantee the Loan Obligations, unless such consent, approval, license or authorization has been received; provided that there shall be no obligation to obtain such consent, approval, license or authorization,

(d) each Subsidiary that is prohibited by any applicable contractual requirement (but excluding any restriction in any organizational documents of such Subsidiary) from Guaranteeing the Loan Obligations on the Closing Date or at the time such Subsidiary becomes a Subsidiary not in violation of Section 6.08(b) (and for so long as such restriction or any replacement or renewal thereof is in effect) so long as (x) in the case of Subsidiaries existing on the Closing Date, such contractual obligation is in existence on the Closing Date (it being understood and agreed that, as of the Closing Date, TA West Greenwich shall be an "Excluded Subsidiary" pursuant to this clause (d)(x) and, following the repayment and termination of the TA West Greenwich Loan Agreement, TA West Greenwich shall cease to be an "Excluded Subsidiary" pursuant to this clause (d)(x)) and (y) in the case of Subsidiaries acquired after the Closing Date, such contractual obligation is in existence at the time of such acquisition and not entered into in contemplation of such acquisition,

(e) each Foreign Subsidiary, each FSHCO and each Subsidiary of the foregoing,

(f) any other Subsidiary with respect to which the Borrower, in consultation with the Administrative Agent, reasonably determines that providing a Guarantee of the Loan Obligations would result in material adverse Tax consequences,

(g) any other Subsidiary with respect to which the Administrative Agent and the Borrower reasonably agree that the cost or burden of providing a Guarantee of the Loan Obligations are likely to be excessive in relation to the value to be afforded thereby,

(h) each Unrestricted Subsidiary,

(i) any captive insurance Subsidiaries, any special purpose entities, any broker-dealer subsidiaries or not-for-profit Subsidiaries;

(j) with respect to any Excluded Swap Obligation, any Subsidiary that is not an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder; and

(k) each Subsidiary set forth on Schedule 1.01 as of the Closing Date.

provided that, to the extent that any such Subsidiary is a borrower, guarantor or other obligor under the ABL Documents (other than TA West Greenwich to the extent it is an Excluded Subsidiary pursuant to clause (d)(x) above), then such Subsidiary shall not constitute an Excluded Subsidiary hereunder but instead shall constitute a Subsidiary Loan Party under the Loan Documents.

"Excluded Swap Obligation" shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant under a Loan Document by such Guarantor 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 thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Guarantor, or grant by such Guarantor of a security interest, becomes or would become effective with respect to such Swap Obligation, in each case after giving effect to any applicable "keepwell" provision in the Subsidiary Guarantee Agreement. If a Swap Obligation arises under a master agreement governing more than one Hedging Agreement, such exclusion shall apply to only the portion of such Swap Obligations that is attributable to Hedging Agreements for which such Guarantee or security interest becomes illegal.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, the Collateral Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (i)(a) Taxes imposed on or measured by its overall Net Income (however denominated), franchise Taxes, and branch profits Taxes imposed on it, in each case by a jurisdiction (including any political subdivision thereof) as a result of such recipient being organized in, having its principal office in, or in the case of any Lender, having its applicable Lending Office in, such jurisdiction, or (b) Other Connection Taxes, (ii) in case of any Lender, U.S. federal withholding Tax imposed on any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document that is required to be imposed on amounts payable to a Lender (other than to the extent such Lender is an assignee pursuant to a request by the Borrower under Section 2.19(b) or 2.19(c)) pursuant to laws in force at the time such Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the designation of a new Lending Office (or assignment), to receive additional amounts or indemnification payments from any Loan Party with respect to such withholding Tax pursuant to Section 2.17, (iii) any withholding Tax that is attributable to such recipient's failure to comply with Section 2.17(d), (e) or (g), or (iv) any U.S. federal withholding Tax imposed under FATCA.

"Existing Loans" shall have the meaning assigned to such term in Section 2.24(a).

"Existing SVC Leases" shall mean, collectively, the following: (in each case as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced): (a) the Second Amended and Restated Lease Agreement No. 1, dated as of October 14, 2019, by and among HPT TA Properties Trust ("HPT TA Trust"), HPT TA Properties LLC ("HPT TA LLC") and TA Operating LLC, (b) the Second Amended and Restated Lease Agreement No. 2, dated as of October 14, 2019, by and among HPT TA Trust, HPT TA LLC and TA Operating LLC, (c) the Second Amended and Restated Lease Agreement No. 3, dated as of October 14, 2019, by and among HPT Trust, HPT LLC and TA Operating LLC, (d) the Second Amended and Restated Lease Agreement No. 4, dated as of October 14, 2019, by and among HPT TA Trust, HPT TA LLC and TA Operating LLC and (e) the Amended and Restated Lease Agreement No. 5, dated as of October 14, 2019, by and among Highway Ventures Properties Trust, Highway Ventures Properties LLC and TA Operating LLC.

"Existing Tranche" shall have the meaning assigned to such term in Section 2.24(a).

"Extended Term Loans" shall have the meaning assigned to such term in Section 2.24(a).

"Extended Tranche" shall have the meaning assigned to such term in Section 2.24(a).

"Extending Lender" shall have the meaning assigned to such term in Section 2.24(b).

"Extension" shall have the meaning assigned to such term in Section 2.24(b).

"Extension Amendment" shall have the meaning assigned to such term in Section 2.24(c).

"Extension Date" shall have the meaning assigned to such term in Section 2.24(d).

"Extension Election" shall have the meaning assigned to such term in Section 2.24(b).

"Extension Request" shall have the meaning assigned to such term in Section 2.24(a).

"Extension Request Deadline" shall have the meaning assigned to such term in Section 2.24(b).

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Effective Rate" shall mean, 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 arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Effective 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, (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average (rounded upward, if necessary, to a whole multiple of 1/100 of 1.00%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it and (c) if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero.

"Fee Letter" shall mean that certain Fee Letter, dated December 14, 2020, by and among the Borrower and Citigroup Global Markets Inc., BofA Securities, Inc., PNC Capital Markets LLC, U.S. Bank National Association and Wells Fargo Securities, LLC.

"Finance Lease" shall mean, as applied to any person, any lease of any property (whether real, personal, or mixed) by that person as lessee that, in conformity with GAAP, is, or is required to be, accounted for as a finance lease on the balance sheet of that person.

"Financial Officer" of any person shall mean the Chief Financial Officer or an equivalent financial officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such person.

"First Lien Net Leverage Ratio" shall mean, with respect to any Test Period, the ratio of (A) (i) Consolidated First Lien Secured Debt of the Borrower and its Subsidiaries outstanding as of the last day of such Test Period less (ii) the lesser of (x) $25,000,000 and (y) the amount of the Unrestricted Cash of the Borrower and its Subsidiaries on such date, to (B) EBITDA of the Borrower and its Subsidiaries for the then most recently ended Test Period, in each case, with such pro forma adjustments to Consolidated First Lien Secured Debt and EBITDA as are appropriate and consistent with the pro forma adjustment provisions set forth in Section 1.06.

"Fitch" shall mean Fitch Ratings Inc. and its successors and assigns.

"Fixed Amounts" shall have the meaning assigned to such term in Section 1.07.

"Foreign Lender" shall mean any Lender (a) that is not disregarded as separate from its owner for U.S. federal income Tax purposes and that is not a "United States person" as defined by Section 7701(a)(30) of the Code or (b) that is disregarded as separate from its owner for U.S. federal income Tax purposes and whose regarded owner is not a "United States person" as defined in Section 7701(a)(30) of the Code.

"Foreign Subsidiary" shall mean any Subsidiary that is incorporated or organized under the laws of any jurisdiction other than the United States of America, any state thereof or the District of Columbia.

"FSHCO" shall mean any Subsidiary (i) that is organized under the laws of the United States, any state thereof or the District of Columbia and (ii) substantially all of the assets of which consist of securities or Equity Interests or Equity Interests and Indebtedness of one or more CFCs or FSHCOs.

"Funded Debt" means all Indebtedness of the Borrower and the Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

"GAAP" shall mean generally accepted accounting principles in effect from time to time in the United States of America, applied on a consistent basis, subject to the provisions of Section 1.02.

"Governmental Authority" shall mean any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

"Group Member" shall mean each of the Borrower and its Subsidiaries and "Group Members" shall refer to each such person, collectively.

"Guarantee" of or by any person (the "guarantor") shall mean (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of 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 the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of the guarantor securing any Indebtedness or other obligation (or any existing right, contingent or otherwise, of the holder of Indebtedness or other obligation to be secured by such a Lien) of any other person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, that the term "Guarantee" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or Disposition of assets permitted by 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 Indebtedness 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 such person in good faith.

"guarantor" shall have the meaning assigned to such term in the definition of the term "Guarantee."

"Guarantors" shall mean the Subsidiary Loan Parties.

"Hazardous Materials" shall mean any material, substance or waste that is listed, regulated, or otherwise defined as hazardous, toxic, radioactive, a pollutant or a contaminant (or words of similar regulatory intent or meaning) under Environmental Law, or which could give rise to liability under any Environmental Law, including but not limited to petroleum (including crude oil or any fraction thereof), petroleum by-products, mold, polychlorinated biphenyls, urea-formaldehyde insulation, per- or polyfluoroalkyl substances, asbestos or asbestos-containing material, flammable or explosive substances, or pesticides.

"Hedge Bank" shall mean (i) any person that at the time it enters into a Hedging Agreement, is a Lender or an Agent or an Affiliate or branch of a Lender or an Agent and (ii) any other person from time to time designated in writing by the Borrower and approved in writing by the Administrative Agent (which approval shall not be unreasonably withheld, conditioned or delayed), in each case, in its capacity as a party to such Hedging Agreement; provided that no such person shall be considered a Hedge Bank or a Secured Party until such time as it shall have delivered written notice to the Administrative Agent that such person is a Hedge Bank and a Secured Party.

"Hedging Agreement" shall mean any agreement with respect to any swap, forward, cap, future or derivative transaction, or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or credit spread transaction, repurchase transaction, reserve repurchase transaction, securities lending transaction, weather index transaction, spot contracts, fixed price physical delivery contracts, or any similar transaction or any combination of these transactions, in each case of the foregoing, whether or not exchange traded; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of the Subsidiaries shall be a Hedging Agreement.

"Holding Company" means any person so long as such person directly or indirectly holds 100% of the total voting power of the Voting Stock of the Borrower, and at the time such person acquired such voting power, no "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but (x) excluding any employee benefit plan of such person or its Subsidiaries and any person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan or (y) any other Holding Company), shall have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of such person.

"Immaterial Subsidiary" shall mean any Subsidiary that did not, as of the last day of the fiscal quarter of the Borrower most recently ended for which financial statements have been (or were required to be) delivered pursuant to Section 4.01(g), 5.04(a) or 5.04(b), (a) have assets with a value in excess of 2.5% of the Consolidated Total Assets and EBITDA representing in excess of 2.5% of EBITDA of the Borrower and its Subsidiaries for the then most recently ended Test Period, or (b) when taken together with all Immaterial Subsidiaries as of such date, have assets with a value in excess of 5% of Consolidated Total Assets and EBITDA representing in excess of 5% of EBITDA of the Borrower and its Subsidiaries for the then most recently ended Test Period.

"Incremental Amendment" shall mean an amendment to this Agreement, in form and substance reasonably satisfactory to the Administrative Agent and the Borrower, among the Borrower, the Administrative Agent and the Lenders providing Indebtedness in accordance with Section 2.22.

"Incremental Amount" shall mean, at any date of determination (or, in the case of a Limited Condition Acquisition as of the LCA Test Date) an amount not in excess of (x) in the case of any incurrence of any unsecured Incremental Equivalent Debt and Incremental Equivalent Debt that is secured by Liens that are junior to the Liens securing the Loan Obligations, on such date, the maximum aggregate principal amount that can be incurred without causing the Borrower not to be in pro forma compliance (in all cases, (i) after giving effect to the incurrence of such Indebtedness and the use of proceeds thereof, (ii) without netting the cash proceeds of such Indebtedness then being incurred and (iii) at the option of the Borrower with respect to a delayed draw facility, either (A) assuming any such Indebtedness in the form of a delayed draw facility is fully drawn at the time such delayed draw facility is established or (B) treating such Indebtedness in the form of a delayed draw facility as being incurred only at the time any loans in respect of such delayed draw facility are actually funded) with the Maximum Total Net Leverage Requirement, plus (y) the result of (A) $75,000,000 minus (B) the sum of (i) the aggregate principal amount of any Term Facility Increase or any Incremental Term Facility pursuant to Section 2.22 in each case incurred in reliance on this clause (y) prior to the applicable date of determination, plus (ii) the aggregate principal amount of any issuance or incurrence of Incremental Equivalent Debt pursuant to Section 2.23 in each case incurred in reliance on this clause (y) prior to the applicable date of determination (and, with respect to each Limited Condition Acquisition, and only during the period from and after the LCA Test Date and until the earlier of the consummation of such Limited Condition Acquisition or the termination of such Limited Condition Acquisition, the aggregate amount of the Indebtedness referenced in clauses (i) and (ii) above contemplated to be incurred in connection with such Limited Condition Acquisition) plus (z) the aggregate principal amount of all voluntary prepayments, repurchases, redemptions or debt buybacks (in the principal amount of the Indebtedness subject thereto), and payments utilizing yank-a-bank provisions (including Section 2.19, but, in all cases, only to the extent that the underlying Indebtedness is actually retired), in respect of any Term Loans, Incremental Term Loans, Incremental Equivalent Debt, Specified Refinancing Debt and any other Refinancing Indebtedness with respect to the foregoing, in each case that is secured by Liens that are pari passu with the Liens securing the Loan Obligations; provided that (aa) the Borrower shall have been deemed to incur amounts under clause (x) prior to utilizing amounts under clause (y) or (z) and (bb) if the Borrower incurs Indebtedness under clause (x) on the same date it incurs Indebtedness under clause (y) or (z), then the Maximum Total Net Leverage Requirement shall be calculated without giving effect to any incurrence of Indebtedness under clause (y) or (z); provided, further, that any Indebtedness that was previously incurred in reliance on clause (y) or (z) above may, at the election of the Borrower, later be reclassified as having been incurred under the applicable sub-clause in clause (x) above so long as the Borrower meets the requirements of such applicable sub-clause (x) on a pro forma basis at the time of such reclassification (and the available amount under clause (y) or (z), as applicable, above shall be increased by the amount so reclassified). Notwithstanding anything to the contrary in this Agreement (and for the avoidance of doubt), in no event shall the Borrower be permitted to incur (a) any Incremental Term Facility or Term Facility Increase pursuant to clause (x) above or (b) any Incremental Equivalent Debt that is secured by Liens that are pari passu with the Liens securing the Loan Obligations pursuant to clause (x) above.

"Incremental Equivalent Debt" has the meaning specified in Section 2.23(a)

"Incremental Term Commitment" has the meaning specified in Section 2.22(b)(i).

"Incremental Term Facility" has the meaning specified in Section 2.22(b)(i).

"Incremental Term Facility Effective Date" has the meaning specified in Section 2.22(b)(iii).

"Incremental Term Loan" has the meaning specified in Section 2.22(b)(i).

"Incurrence-Based Amounts" shall have the meaning assigned to such term in Section 1.07.

"Indebtedness" of any person shall mean, if and to the extent (other than with respect to clause (i)) the same would constitute indebtedness or a liability on a balance sheet prepared in accordance with GAAP, without duplication, (a) all obligations of such person for borrowed money, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (d) all obligations of such person issued or assumed as the deferred purchase price of property or services (other than such obligations accrued in the ordinary course of business or consistent with industry practice), to the extent that the same would be required to be shown as a long term liability on a balance sheet prepared in accordance with GAAP, (e) all Capitalized Lease Obligations of such person, (f) all net payments that such person would have to make in the event of an early termination, on the date Indebtedness of such person is being determined, in respect of outstanding Hedging Agreements, (g) the principal component of all obligations, contingent or otherwise, of such person as an account party in respect of letters of credit, (h) the principal component of all obligations of such person in respect of bankers' acceptances, (i) all Guarantees by such person of Indebtedness of another person described in clauses (a) to (h) above and (j) the amount of all obligations of such person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock); provided that Indebtedness shall not include (A) trade and other ordinary-course payables, accrued expenses, and intercompany liabilities arising in the ordinary course of business or consistent with industry practice, (B) prepaid or deferred revenue, (C) purchase price holdbacks arising in the ordinary course of business or consistent with industry practice in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset, (D) earn-out obligations until 60 days after such obligation has become due and payable in cash and has not been paid and such obligation is reflected as a liability on the balance sheet of such person in accordance with GAAP, (E) in the case of the Borrower and its Subsidiaries, (I) all intercompany Indebtedness having a term not exceeding 364 days (inclusive of any roll-over or extensions of terms) and made in the ordinary course of business or consistent with industry practice and (II) intercompany liabilities in connection with the cash management, Tax and accounting operations of the Borrower and the Subsidiaries, (F) liabilities in respect of membership deposits, (G) asset retirement obligations in respect of underground storage tanks or (H) Non-Finance Lease Obligations. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness limits the liability of such person in respect thereof.

"Indemnified Taxes" shall mean all Taxes imposed on or with respect to or measured by any payment made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document other than (a) Excluded Taxes and (b) Other Taxes.

"Indemnitee" shall have the meaning assigned to such term in Section 9.05(b).

"Ineligible Institution" shall mean (i) the persons identified as "Disqualified Lenders" in writing to the Arrangers by the Borrower on or prior to the Closing Date, and any Affiliates of such persons that are clearly identifiable as Affiliates by virtue of their names or that are identified to the Administrative Agent in writing by the Borrower from time to time, and (ii) the persons as may be identified in writing to the Administrative Agent by the Borrower from time to time thereafter (in the case of this clause (ii)) in respect of bona fide business competitors of the Borrower (in the good faith determination of the Borrower), by delivery of a written notice thereof to the Administrative Agent setting forth such person or persons, and any Affiliates of such bona fide business competitors that are clearly identifiable as Affiliates by virtue of their names or that are identified to the Administrative Agent in writing by the Borrower from time to time; provided that no such updates pursuant to this clause (ii) shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation interest in respect of the Loans from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Ineligible Institutions.

"Information" shall have the meaning assigned to such term in Section 3.14(a).

"Information Memorandum" shall mean the Lender Presentation dated December 2020, as modified or supplemented prior to the Closing Date.

"Initial Term Loan" shall have the meaning assigned to such term in Section 2.01.

"Intellectual Property" shall mean the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States of America, state, multinational or foreign laws or otherwise, including, without limitation, copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, service-marks, domain names, software technology, know-how and processes, recipes, formulas, trade secrets, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Election Request" shall mean a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07 and substantially in the form of Exhibit E or another form approved by the Administrative Agent.

"Interest Payment Date" shall mean, (a) with respect to any Eurocurrency Term Loan, (i) the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, (ii) in the case of a Eurocurrency Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing and (iii) in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type, and (b) with respect to any ABR Term Loan, the last Business Day of each calendar quarter.

"Interest Period" shall mean, as to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1, 2, 3 or 6 months thereafter (or 12 months, if at the time of the relevant Borrowing, all relevant Lenders make interest periods of such length available or, if agreed to by the Administrative Agent and all relevant Lenders, any shorter period), as the Borrower may elect; provided, however, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interpolated Screen Rate" shall mean, in relation to the LIBO Rate for any Loan, the rate which results from interpolating on a linear basis between (a) the rate appearing on the ICE Benchmark Administration page (or on any successor or substitute page of such service) for the longest period (for which that rate is available) which is less than the Interest Period for such Loan and (b) the rate appearing on the ICE Benchmark Administration page (or on any successor or substitute page of such service) for the shortest period (for which that rate is available) which exceeds the Interest Period for such Loan each as of approximately 11:00 A.M. London time, two Business Days prior to the commencement of such Interest Period.

"Investment" shall have the meaning assigned to such term in Section 6.03.

"IRS" shall mean the U.S. Internal Revenue Service.

"Junior Financing" shall mean any Indebtedness of any Loan Party (other than intercompany Indebtedness) that is (x) unsecured, (y) subordinated in right of payment to the Loan Obligations or (z) secured by the Collateral on a junior basis to the Loan Obligations; *provided*, that Indebtedness incurred under the ABL Documents and any Permitted Refinancing thereof shall not constitute Junior Financing.

"Latest Maturity Date" shall mean, at any date of determination, the latest Maturity Date then in effect on such date of determination.

"LCA Election" shall have the meaning assigned to such term in Section 1.06(i)(i).

"LCA Test Date" shall have the meaning assigned to such term in Section 1.06(i)(i).

"Lease Agreement" shall mean any Existing SVC Lease or any other lease agreement entered into by a Group Member pursuant to which such Group Member leases Real Property (and related personal property) from any other person.

"Lender" shall mean each financial institution listed on Schedule 2.01 and any person that becomes a "Lender" hereunder pursuant to Section 9.04, in each case other than any such person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 9.04.

"Lending Office" shall mean, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Loans.

"LIBO Rate" shall mean, with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the commencement of such Interest Period by reference to the ICE Benchmark Administration Interest Settlement Rates (or the successor thereto if the ICE Benchmark Administration is no longer making such rates available) for Dollar deposits (as set forth by any service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration (or its successor) as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which Dollar deposits are offered for such relevant Interest Period to major banks in the London interbank market in London, England by the Administrative Agent at approximately 11:00 a.m. (London time) on the date that is two Business Days prior to the beginning of such Interest Period; provided, further, that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the Interpolated Screen Rate.

"Lien" shall mean, with respect to any asset, any mortgage, deed of trust, lien, hypothecation, pledge, charge in the nature of a security interest or other security interest in or on such asset; provided that in no event shall an operating lease (or other lease in respect of a Non-Finance Lease Obligation) or an agreement to sell be deemed to constitute a Lien.

"Limited Condition Acquisition" shall mean any Permitted Acquisition or other similar Investment that is permitted by this Agreement, the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

"LLC Division" shall mean the statutory division of any limited liability company into two or more limited liability companies pursuant to Section 18-217 of the Delaware Limited Liability Company Act or any comparable provision of any other law.

"Loan Documents" shall mean (i) this Agreement, (ii) the Subsidiary Guarantee Agreement, (iii) the Security Documents, (iv) any Note issued under Section 2.09(e), (v) the ABL/Term Intercreditor Agreement, (vi) the Fee Letter, (vii) the Collateral Agent Fee Letter and (viii) any other document designated as a Loan Document by the Administrative Agent and the Borrower; but specifically excluding Secured Hedging Agreements and Secured Cash Management Agreements.

"Loan Obligations" shall mean (a) the due and punctual payment by the Borrower of (i) the unpaid principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans made to the Borrower under this Agreement, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations of the Borrower owed under or pursuant to this Agreement, each other Loan Document, each Secured Hedging Agreement and each Secured Cash Management Agreement, including obligations to pay fees, expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), and (b) the due and punctual payment of all obligations of each other Loan Party under or pursuant to each of the Loan Documents, each Secured Hedging Agreement and each Secured Cash Management Agreement; provided that (a) obligations of the Borrower or any of its Subsidiaries under any Secured Cash Management Agreement or Secured Hedging Agreement shall be secured and Guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Loan Obligations are so secured and Guaranteed and (b) any release of Collateral or Guarantees effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Secured Hedging Agreements or any Secured Cash Management Agreements. Notwithstanding the foregoing, the "Loan Obligations" of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

"Loan Parties" shall mean the Borrower and the Subsidiary Loan Parties.

"Loans" shall mean the Term Loans.

"Local Time" shall mean New York City time (daylight or standard, as applicable).

"LP Division" shall mean the statutory division of any limited partnership into two or more limited partnerships pursuant to Section 17-220 of the Delaware Limited Partnership Act or any comparable provision of any other law.

"Margin Stock" shall have the meaning assigned to such term in Regulation U.

"Material Adverse Effect" shall mean a material adverse effect on (i) the business, property, operations or financial condition of the Borrower and its Subsidiaries, taken as a whole, or (ii) the validity or enforceability of any of the Loan Documents or the ability of the Loan Parties (taken as a whole) to perform their obligations thereunder or (iii) the rights and remedies of the Administrative Agent, the Collateral Agent and/or the Lenders under the Loan Documents.

"Material Indebtedness" shall mean Indebtedness for borrowed money (other than intercompany Indebtedness and Loans) of any one or more of the Borrower or any Subsidiary in an aggregate principal amount exceeding $25,000,000.

"Maturity Date" shall mean (a) with respect to the Initial Term Loans, the Term Facility Maturity Date, (b) with respect to any Tranche of Extended Term Loans, the final maturity date thereof as specified in the applicable Extension Amendment, (c) with respect to any Specified Refinancing Term Loans, the final maturity date thereof as specified in the applicable Refinancing Amendment and (d) with respect to any Incremental Term Facility, the final maturity date thereof as specified in the applicable Incremental Amendment.

"Maximum Rate" shall have the meaning assigned to such term in Section 9.09.

"Maximum Total Net Leverage Requirement" shall mean, with respect to any incurrence, issuance or assumption of Indebtedness, the requirement that, on a pro forma basis, on the applicable date of determination after giving effect to such incurrence, issuance or assumption of Indebtedness, and the use of proceeds thereof (but without giving effect to any Unrestricted Cash of the Borrower and its Subsidiaries that will be received from the proceeds of such Indebtedness then being incurred), the Total Net Leverage Ratio as of the end of the Test Period then most recently ended shall not exceed 5.25 to 1.00; provided, that, for purposes of testing the Maximum Total Net Leverage Requirement with respect to the establishment of any undrawn delayed draw facility, the Borrower may elect to treat such Indebtedness as either (x) fully drawn at the time such delayed draw facility is established or (y) incurred only at the time any loans in respect of such delayed draw facility are actually funded.

"Minimum Extension Condition" shall have the meaning assigned to such term in Section 2.24(g).

"Moody's" shall mean Moody's Investors Service, Inc. and its successors and assigns.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

"Net Income" shall mean, 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" shall mean:

(a) 100% of the cash proceeds (including Cash Equivalents and cash proceeds subsequently received (as and when received) in respect of non-cash consideration initially received) received by the Borrower or any Subsidiary from any Prepayment Event, net of (i) selling costs and out-of-pocket expenses, (ii) Taxes paid or payable (in the good faith determination of the Borrower) as a result thereof, (iii) the amount of any reasonable reserve established in accordance with GAAP against any adjustment to the sale price or any liabilities (other than any Taxes deducted pursuant to clause (i) or (ii) above) (x) related to any of the applicable assets and (y) retained by the Borrower or any of the Subsidiaries (however, the amount of any subsequent reduction of such reserve (other than in connection with a payment in respect of any such liability) shall be deemed to be cash proceeds of such Prepayment Event occurring on the date of such reduction), (iv) payments made on a ratable basis (or less than ratable basis) to holders of non-controlling interests in non-Wholly Owned Subsidiaries as a result of such Prepayment Event and (v) amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness that is secured by the asset subject to such Prepayment Event and that is required to be repaid (and is timely repaid) in connection with such Prepayment Event (other than as required by Section 2.11(b)); provided that, if the Borrower shall deliver a certificate of a Responsible Officer of the Borrower to the Administrative Agent promptly following receipt of any such proceeds setting forth the Borrower's intention to reinvest any portion of such proceeds in the business of the Borrower or any of the Subsidiaries, including using such proceeds to acquire, maintain, develop, construct, improve, upgrade or repair any asset used or useful in the business of the Borrower or its Subsidiaries (other than Cash Equivalents) or to make Permitted Acquisitions or any other Investments not prohibited by this Agreement, Capital Expenditures or Capitalized Software Expenditures (without duplication), in each case, within 360 days of such receipt, such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 360 days of such receipt, so reinvested or contractually committed to be so reinvested (it being understood that if any portion of such proceeds are not so reinvested within such 360 days but within such 360-day period are contractually committed to be reinvested, then such remaining portion if not so reinvested within 180 days following the end of such 360-day period shall constitute Net Proceeds as of such date without giving effect to this proviso); provided, further, that (x) no net cash proceeds calculated in accordance with the foregoing shall constitute Net Proceeds unless the aggregate amount of net cash proceeds during such fiscal year shall exceed $2,500,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds) and (y) 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 $1,000,000 (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds); and

(b) 100% of the cash proceeds from the incurrence, issuance or sale by the Borrower or any Subsidiary Loan Party of any Indebtedness (other than Excluded Indebtedness), net of all Taxes and fees (including investment banking fees, attorney's fees and other customary fees), underwriting discounts, premiums, commissions, costs and other expenses, in each case incurred in connection with such incurrence, issuance or sale.

"New Incremental Term Lender" shall have the meaning assigned to such term in Section 2.22(b)(ii).

"Non-Bank Tax Certificate" shall have the meaning assigned to such term in Section 2.17(e)(i).

"Non-Consenting Lender" shall have the meaning assigned to such term in Section 2.19(c).

"Non-Extending Lender" shall have the meaning assigned to such term in Section 2.24(e).

"Non-Finance Lease Obligation" shall mean, as applied to any person, any lease obligation with respect to a lease of any property (whether real, personal, or mixed) by that person as lessee that does not constitute a Finance Lease. For the avoidance of doubt, a straight-line or operating lease shall be considered a Non-Finance Lease Obligation.

"Note" shall have the meaning assigned to such term in Section 2.09(e).

"OFAC" shall have the meaning assigned to such term in the definition of "Sanctions".

"Other Applicable ECF" means Excess Cash Flow or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

"Other Applicable Indebtedness" means Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Indebtedness, in each case, secured on a *pari passu* basis with the Term Loans (without regard to the control of remedies), together with Refinancing Indebtedness in respect of any of the foregoing that is secured on a *pari passu* basis with the Term Loans (without regard to the control of remedies).

"Other Applicable Net Proceeds" means Net Proceeds or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

"Other Connection Taxes" shall mean, with respect to the Administrative Agent, the Collateral Agent or any Lender, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising solely from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" shall mean any and all present or future stamp or documentary, intangible, recording or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, registration, delivery or enforcement of, consummation or administration of, from the receipt or perfection of a security interest under, or otherwise with respect to, the Loan Documents (but excluding any Excluded Taxes).

"Participant" shall have the meaning assigned to such term in Section 9.04(c)(i).

"Participant Register" shall have the meaning assigned to such term in Section 9.04(c)(ii).

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Permitted Acquisition" shall mean the purchase or other acquisition of (x) all or substantially all of the property and assets or business of any person or of assets constituting a business unit, a line of business or division of such person, or (y) the majority of Equity Interests in a person that, upon the consummation thereof, will be directly owned by the Borrower and/or one or more Subsidiaries (including as a result of a merger or consolidation) (and such person or assets to be acquired pursuant to clauses (x) and (y), the "Target"), to the extent that:

(a) each applicable Loan Party and any such newly created or acquired Subsidiary shall comply with the requirements of Section 5.10;

(b) the total aggregate cash and noncash consideration (including earn-outs and other contingent payment obligations (only to the extent of the reserve, if any, required under GAAP (as determined at the time of the consummation of such Permitted Acquisition)) to be established in respect thereof by the Loan Parties to such sellers and all assumptions of Indebtedness in connection therewith, but excluding any consideration consisting of Equity Interests of the Borrower or funded with the proceeds of any issuance of Equity Interests by the Borrower) paid by the Loan Parties for any such purchase or other acquisition of an entity (such consideration paid, the "Purchase Price") with respect to any Target that does not become a Guarantor (including by way of merger) or of assets that do not become assets of a Loan Party, when aggregated with the Purchase Price paid by the Loan Parties for all other such purchases and other acquisitions made by the Loan Parties of entities that do not become Guarantors (including by way of merger) or of assets that do not become assets of a Loan Party shall not exceed the greater of $20,000,000 and 20% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period;

(c) immediately before and immediately after giving effect to any such purchase or other acquisition and any incurrence of Indebtedness in connection therewith, no Event of Default shall have occurred and be continuing (or, in the case of a Limited Condition Acquisition, no Event of Default shall have occurred and be continuing as of the LCA Test Date and no Event of Default shall have occurred and be continuing under Section 7.01(b), (c), (h) or (i) as of the date the of the consummation of such Limited Condition Acquisition or would result therefrom); and

(d) any person or assets or division as acquired in accordance herewith shall be in same business or lines of business (or a Similar Business) in which the Borrower and/or its Subsidiaries are then engaged and shall otherwise be in compliance with Section 6.07.

"Permitted Junior Refinancing Debt" shall mean (A) any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party in the form of one or more series of junior lien secured notes, bonds or debentures or junior lien secured loans; provided that (i) such Indebtedness is secured by a Lien on all or a portion of the Collateral on a junior-priority basis to the Liens on the Collateral securing the Loan Obligations and is not secured by any property or assets of the Borrower or any Subsidiary other than the Collateral, (ii) such Indebtedness satisfies the requirements set forth in the definition of "Credit Agreement Refinancing Indebtedness", (iii) such Indebtedness is not Guaranteed by any person other than the Subsidiary Loan Parties, (iv) such Indebtedness meets the Permitted Other Debt Conditions and (v) a senior representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent, providing that the Liens on Collateral securing such obligations shall rank junior to the Liens on Collateral securing the Loan Obligations and (B) any unsecured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party in the form of one or more series of senior unsecured notes, bonds or debentures or loans; provided that (i) such Indebtedness is not secured by any property or assets of the Borrower or any Subsidiary, (ii) such Indebtedness satisfies the requirements set forth in the definition of "Credit Agreement Refinancing Indebtedness", (iii) such Indebtedness is not Guaranteed by any person other than the Subsidiary Loan Parties and (iv) such Indebtedness meets the Permitted Other Debt Conditions.

"Permitted Liens" shall have the meaning assigned to such term in Section 6.02.

"Permitted Loan Purchase" shall have the meaning assigned to such term in Section 9.04(h).

"Permitted Loan Purchase Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender as an Assignor and the Borrower or any of the Subsidiaries as an Assignee, as accepted by the Administrative Agent (if required by Section 9.04) in the form of Exhibit F or such other form as shall be approved by the Administrative Agent and the Borrower (such approval not to be unreasonably withheld or delayed).

"Permitted Other Debt Conditions" shall mean that such applicable Indebtedness does not mature or have scheduled amortization payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligations (except (u) solely with respect to any Permitted Junior Refinancing Debt, any payment obligations solely with respect to prepayment amounts declined by any Lender under this Agreement and/or any lender(s) in respect of any other Indebtedness that is secured by Liens that are pari passu with the Liens securing the Loan Obligations (but without regard to control of remedies), or that constitute a customary prepayment provision with respect to Refinancing Indebtedness; (v) solely with respect to any Indebtedness that is secured by Liens that are pari passu with the Liens securing the Loan Obligations (but without regard to control of remedies), any payment obligations that will also be applied to the Term Loans hereunder on a *pro rata* or greater than *pro rata* basis or that constitute a customary prepayment provision with respect to Refinancing Indebtedness, (w) customary acceleration rights after an event of default, (x) customary offers or obligations to repurchase, redeem or repay upon a change of control, fundamental change, asset sale, casualty or condemnation event or similar events, (y) maturity payments for a customary bridge financing which, subject to customary conditions, provides for automatic conversion or exchange into Indebtedness that otherwise complies with the requirements of this definition or (z) AHYDO payments), in each case prior to the Latest Maturity Date at the time such Indebtedness is incurred.

"Permitted Pari Passu Secured Refinancing Debt" shall mean any secured Indebtedness incurred by the Borrower and/or any Subsidiary Loan Party in the form of one or more series of senior secured notes, loans, bonds or debentures; provided that (i) such Indebtedness is secured by Liens on all or a portion of the Collateral on a pari passu basis with the Liens on the Collateral securing the Loan Obligations (but without regard to the control of remedies) and is not secured by any property or assets of the Borrower or any Subsidiary other than the Collateral, (ii) such Indebtedness satisfies the requirements set forth in the definition of "Credit Agreement Refinancing Indebtedness", (iii) such Indebtedness is not Guaranteed by any person other than the Guarantors and (iv) a senior representative acting on behalf of the holders of such Indebtedness shall have become party to or otherwise subject to the provisions of an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent providing that the Liens on the Collateral securing such obligations shall rank equal in priority to the Liens on the Collateral securing the Loan Obligations (but without regard to the control of remedies).

"Permitted Ratio Debt" shall mean any Indebtedness incurred by the Borrower or any Subsidiary so long as (a) such Permitted Ratio Debt ranks pari passu or junior in right of payment and, if secured, junior in right of security with the Loan Obligations, (b) the final maturity of such Permitted Ratio Debt shall be no earlier than the Latest Maturity Date in effect at the time of the incurrence, issuance or obtainment of such Indebtedness, (c) such Permitted Ratio Debt shall not have a Weighted Average Life to Maturity that is shorter than the then longest remaining Weighted Average Life to Maturity of the Term Loans outstanding at the time of incurrence (calculated disregarding the effects of any prepayments or amortization), (d) if such Permitted Ratio Debt is subordinated in right of payment, the Term Loans shall have been designated as "designated senior indebtedness" or its equivalent in respect of such Indebtedness and the subordination provisions applicable thereto shall be reasonably satisfactory to the Administrative Agent, (e) [reserved], (f) such Permitted Ratio Debt shall not be guaranteed by any person that is not a Loan Party, (g) to the extent secured, such Permitted Ratio Debt shall not be secured by Liens on any assets not constituting Collateral and shall be subject to intercreditor arrangements that are in form and substance reasonably satisfactory to the Administrative Agent, (h) immediately after giving effect to the incurrence of such Permitted Ratio Debt on a pro forma basis, the Borrower shall be in compliance with the Maximum Total Net Leverage Requirement and (i) immediately after giving effect to such Permitted Ratio Debt, no Event of Default shall have occurred and be continuing or would result therefrom after giving effect to such Permitted Ratio Debt (or, in the case of Permitted Ratio Debt incurred to finance a Limited Condition Acquisition, no Event of Default shall have occurred and be continuing as of the LCA Test Date and no Event of Default shall have occurred and be continuing under Section 7.01(b), (c), (h) or (i) as of the date the of the consummation of, and after giving effect to, such Limited Condition Acquisition).

"Permitted Refinancing" shall mean, with respect to any person, any modification, refinancing, refunding, renewal, replacement, redemption, repurchase, defeasance, exchange and/or extension (collectively to "Refinance" or a "Refinancing" or "Refinanced") of any Indebtedness (any such Indebtedness as so modified, refinanced, refunded, renewed, replaced, redeemed, repurchased, defeased, exchanged and/or extended, "Refinancing Indebtedness") of such person; provided that (a) the principal amount of such Refinancing Indebtedness does not exceed the principal amount of the Indebtedness so Refinanced except by an amount equal to unpaid accrued interest, fees and premium (including tender premium) and penalties (if any) thereon plus upfront fees and original issue discount and other reasonable and customary fees and expenses incurred or paid in connection with such Refinancing, plus an amount equal to any existing commitment unutilized and letters of credit undrawn thereunder; (b) such Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being Refinanced; (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Loan Obligations arising under the Loan Documents and was required to be subordinated when initially incurred, such Refinancing Indebtedness is subordinated in right of payment to the Loan Obligations arising under the Loan Documents on terms, taken as a whole, as favorable in all material respects to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced; (d) if the Indebtedness being Refinanced is secured by a second-priority or other junior priority security interest in the Collateral and/or subject to any intercreditor arrangements for the benefit of the Lenders and was required to be subject to such intercreditor arrangements when initially incurred, such Refinancing Indebtedness is secured and subject to intercreditor arrangements on terms, taken as a whole, as favorable in all material respects to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced or is unsecured; (e) if the Indebtedness being Refinanced is unsecured, such Refinancing Indebtedness shall be unsecured; (f) to the extent the Indebtedness being Refinanced constitutes Incremental Equivalent Debt or Permitted Ratio Debt, the terms and conditions of the Refinancing Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums) are, when taken as a whole, (x) substantially identical to or (y) not materially more favorable to the lenders or holders providing such Refinancing Indebtedness in the reasonable judgment of the Borrower than those applicable to the Indebtedness being Refinanced, when taken as a whole or are otherwise reasonably satisfactory to the Administrative Agent (other than covenants or other provisions applicable only to periods after Latest Maturity Date at the time of such Refinancing) and (g) such Refinancing Indebtedness is incurred by the person who is or would have been permitted to be the obligor or guarantor (or any successor thereto) on the Indebtedness being Refinanced.

"person" shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) that is (i) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, (ii) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by the Borrower, a Subsidiary or any ERISA Affiliate, and (iii) in respect of which the Borrower, a Subsidiary or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform" shall have the meaning assigned to such term in Section 9.17(a).

"Prepayment Event" shall mean (a) any Asset Sale pursuant to Section 6.04(c), (d) and (s) (but excluding, prior to the Discharge of ABL Debt (as defined in the ABL/Term Intercreditor Agreement), any Asset Sales of ABL Priority Collateral) and (b) any loss of or damage to any asset of the Borrower or any of its Subsidiaries for which the Borrower or any of its Subsidiaries has received insurance proceeds or proceeds of a condemnation award (but excluding, prior to the Discharge of ABL Debt (as defined in the ABL/Term Intercreditor Agreement), any insurance proceeds or proceeds of a condemnation award in respect of ABL Priority Collateral).

"primary obligor" shall have the meaning assigned to such term in the definition of the term "Guarantee."

"Prime Rate" shall mean the rate of interest per annum as quoted by The Wall Street Journal.

"Projections" shall mean any projections of the Borrower and the Subsidiaries furnished to the Lenders or the Administrative Agent by or on behalf of the Borrower or any of the Subsidiaries prior to the Closing Date.

"PTE" shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public Lender" shall have the meaning assigned to such term in Section 9.17(b).

"Purchase Price" shall have the meaning specified in the definition of "Permitted Acquisition".

"QFC" shall have the meaning assigned to such term in Section 9.23.

"QFC Credit Support" shall have the meaning assigned to such term in Section 9.23.

"Qualified Equity Interests" shall mean any Equity Interest other than Disqualified Stock.

"Rate" shall have the meaning assigned to such term in the definition of the term "Type."

"Rating Agencies" shall mean 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.

"Real Property" shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, whether by lease, sublease, license, or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment incidental to the ownership, lease or operation thereof.

"Refinancing Amendment" shall mean an amendment to this Agreement, among the Borrower, the Administrative Agent and the Lenders providing Specified Refinancing Debt, effecting the incurrence of such Specified Refinancing Debt in accordance with Section 2.25.

"Register" shall have the meaning assigned to such term in Section 9.04(b)(iv).

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Related Fund" shall mean, with respect to any Lender that is a fund that invests in bank or commercial loans and similar extensions of credit, any other fund that invests in bank or commercial loans and similar extensions of credit and is advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity (or an Affiliate of such entity) that administers, advises or manages such Lender.

"Related Parties" shall mean, with respect to any specified person, such person's Controlled or Controlling Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such person and such person's Controlled or Controlling Affiliates.

"Release" shall mean any releasing, spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dispersal, dumping, disposing, depositing, emanating or migrating in, into, onto or through the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material).

"Relevant Governmental Body" shall have the meaning assigned to such term in Section 2.14(b).

"Reportable Event" shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

"Required Facility Lenders" shall mean, as of any date of determination, with respect to one or more Tranches, Lenders having or holding a majority of the sum of (a) the Loans outstanding under such Tranche or Tranches and (b) the aggregate unused Commitments under such Tranche or Tranches.

"Required Lenders" shall mean, at any time, Lenders having Loans outstanding that, taken together, represent more than 50% of the sum of all Loans outstanding at such time.

"Required Percentage" shall mean, with respect to any Excess Cash Flow Period, (a) 50% if the First Lien Net Leverage Ratio (after giving effect to any prepayments or buybacks described in Section 2.11(c)(ii)) as of the last day of and for such Excess Cash Flow Period is greater than 1.30 to 1.00, (b) 25% if the First Lien Net Leverage Ratio (after giving effect to any prepayments or buybacks described in Section 2.11(c)(ii)) as of the last day of and for such Excess Cash Flow Period is greater than 0.80 to 1.00 but less than or equal to 1.30 and (c) 0% if the First Lien Net Leverage Ratio (after giving effect to any prepayments or buybacks described in Section 2.11(c)(ii)) as of the last day of and for such Excess Cash Flow Period is less than or equal to 0.80 to 1.00.

"Requirement of Law" shall mean, as to any person, any law, treaty, rule, regulation, statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such person or any of its property or assets or to which such person or any of its property or assets is subject.

"Resolution Authority" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement, or any other duly authorized employee or signatory of such person.

"Restricted Payments" shall have the meaning assigned to such term in Section 6.05. The amount of any Restricted Payment made other than in the form of Cash Equivalents shall be the fair market value thereof (as determined by the Borrower in good faith).

"Retained Excess Cash Flow" shall mean, for any Excess Cash Flow Period, the Retained Excess Cash Flow Percentage of Excess Cash Flow for such Excess Cash Flow Period.

"Retained Excess Cash Flow Amount" shall mean, at any date of determination, an amount, not less than zero in any Excess Cash Flow Period and determined on a cumulative basis, that is equal to the aggregate cumulative sum of Retained Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date.

"Retained Excess Cash Flow Percentage" shall mean, as of any date of determination, 100% minus the Required Percentage.

"S&P" shall mean S&P Global Ratings, and its successors and assigns.

"Sanctioned Person" shall mean, at any time, any person (a) listed in any Sanctions-related list of designated persons with whom transacting business is prohibited by such Sanctions, (b) located, organized under the laws of or resident in a country or territory that is, or whose government is, the subject of comprehensive Sanctions (which include as of the date of this agreement Cuba, Iran, North Korea, Syria, and Crimea), or (c) owned 50% or more, directly or indirectly, individually or in the aggregate, or controlled (as determined by applicable law) by any person(s) described in the foregoing clauses (a) and (b).

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") or the U.S. Department of State, or (b) the European Union or Her Majesty's Treasury of the United Kingdom.

"SEC" shall mean the Securities and Exchange Commission or any successor thereto.

"Section 2.24 Additional Amendment" shall have the meaning assigned to such term in Section 2.24(c).

"Secured Cash Management Agreement" shall mean any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank that is designated by the Borrower in writing to the Administrative Agent as a "Secured Cash Management Agreement" as of the Closing Date or, if later, as of the time of entering into such Cash Management Agreement, in each case, so long as any such Cash Management Agreement is not also secured by the ABL Documents.

"Secured Hedging Agreement" shall mean any Hedging Agreement permitted under Article VI that is entered into by and between any Loan Party and any Hedge Bank that is designated by the Borrower in writing to the Administrative Agent as a "Secured Hedging Agreement" as of the Closing Date or, if later, as of the time of entering into such Secured Hedging Agreement, in each case, so long as any such Hedging Agreement is not also secured by the ABL Documents.

"Secured Parties" shall mean, collectively, the Administrative Agent, the Collateral Agent, each Lender, each Hedge Bank that is a party to one or more Secured Hedging Agreements, each Cash Management Bank that is a party to one or more Secured Cash Management Agreements and each sub-agent appointed pursuant to Section 8.02 by the Administrative Agent with respect to matters relating to the Loan Documents or by the Collateral Agent with respect to matters relating to any Security Document.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Agreement" shall mean the Security Agreement, dated as of the Closing Date, as it may be amended, restated, supplemented and/or otherwise modified from time to time, among the Borrower, each Subsidiary Loan Party and the Collateral Agent.

"Security Documents" shall mean the Security Agreement and each intellectual property security agreement, each mortgage and each other agreement, instrument or document that creates or purports to create or perfect a Lien in favor of the Collateral Agent for the benefit of the Secured Parties, and each of the joinders and supplements executed and delivered pursuant to any of the foregoing or pursuant to Section 5.10.

"Series LLC" shall mean any series of a limited liability company (including any protected or registered series) established in accordance with Section 18-215 or 18-218 of the Delaware Limited Liability Company Act or any comparable provision of any other law.

"Series LP" shall mean any series of a limited partnership (including any protected or registered series) established in accordance with Section 17-218 or 17-221 of the Delaware Limited Partnership Act or any comparable provision of any other law.

"Shared Services Agreement" shall mean the Amended and Restated Business Management and Shared Services Agreement, dated as of March 12, 2015, by and between the Borrower (formerly known as TravelCenters of America LLC) and The RMR Group LLC (formerly known as REIT Management & Research LLC), a Maryland limited liability company, as the same exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Similar Business" shall mean any business or activities (i) conducted or proposed to be conducted by the Borrower or any of its Subsidiaries on the Closing Date, (ii) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, corollary, complementary, synergistic, reasonably related, or ancillary to any of the foregoing (including non-core incidental businesses acquired in connection with any Permitted Acquisition or permitted Investment) or (iii) any business that in the Borrower's good faith business judgment constitutes a reasonable diversification of businesses conducted by the Borrower or any of its Subsidiaries.

"Solvent" shall mean, with respect to any person, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such person will, as of such date, exceed the amount of all "liabilities of such person, contingent or otherwise," as of such date, (b) the "present fair saleable value" of the assets of such person will, as of such date, be greater than the amount that will be required to pay the liability of such person on its debts as such debts become absolute and matured, (c) such person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, (d) such person will be able to pay its debts as they mature and (e) such person is not insolvent within the meaning of any applicable Requirements of Law. For purposes of this definition, (i) "debt" shall mean liability on a "claim," (ii) "claim" shall mean any (A) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured and (iii) such other quoted terms used in this definition shall be determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors.

"Specified Acquisition Agreement Representations" shall mean, with respect to any Limited Condition Acquisition, such of the representations made by, or with respect to, the applicable target and its subsidiaries in the applicable acquisition agreement (as in effect on the date of execution thereof) as are material to the interests of the Lenders, but only to the extent that the Borrower or its Subsidiaries have the right (taking into account any applicable cure provisions) to terminate their obligations under such acquisition agreement (as in effect on the date of execution thereof) as a result of a breach of such representations in such acquisition agreement (as in effect on the date of execution thereof) or decline to consummate the acquisition as a result of a breach of one or more of such representations in the applicable acquisition agreement.

"Specified Existing Tranche" shall have the meaning assigned to such term in Section 2.24(a).

"Specified Refinancing Debt" shall have the meaning assigned to such term in Section 2.25(a).

"Specified Refinancing Term Commitment" shall mean Specified Refinancing Debt constituting term loan commitments.

"Specified Refinancing Term Loans" shall mean Specified Refinancing Debt constituting term loans.

"Specified Representations" shall mean the representations and warranties made in Sections 3.01(a) (with respect to the organizational existence of the Loan Parties only), 3.02(a), 3.02(b)(i)(B), 3.03, 3.10, 3.11, 3.17, 3.19, 3.25 and 3.26 (as related only to the use of proceeds of the applicable Incremental Term Loans not violating any Anti-Corruption Laws).

"Specified Transaction" shall mean:

(1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an offering of Equity Interests, 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 Subsidiary as discontinued operations (as defined under GAAP),

(3) any Permitted Acquisition or other permitted Investment that results in a person becoming a Subsidiary,

(4) any designation of a subsidiary as a Subsidiary or an Unrestricted Subsidiary in compliance with this Agreement,

(5) any permitted purchase or other permitted acquisition of a business of any person, of assets constituting a business unit, line of business or division of any person,

(6) any permitted disposition (a) that results in a 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 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 Subsidiary during the Test Period,

(8) any borrowing of Incremental Term Loans, Incremental Equivalent Debt or other Indebtedness requiring a financial ratio or test to be calculated on a pro forma basis, or

(9) any Restricted Payment, any Voluntary Junior Prepayment or other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a pro forma basis.

"Statutory Reserves" shall mean the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate or other fronting office making or holding a Loan) is subject for Eurocurrency Liabilities (as defined in Regulation D of the Board). Eurocurrency Term Loans shall be deemed to constitute Eurocurrency Liabilities (as defined in Regulation D of the Board) and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subagent" shall have the meaning assigned to such term in Section 8.02.

"subsidiary" shall mean, with respect to any person (herein referred to as the "parent"), any corporation, partnership, association or other business entity (a) that is, at the time any determination is made, Controlled by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent or (b) of which securities or other ownership interests representing more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" shall mean, unless the context otherwise requires, a subsidiary of the Borrower. Notwithstanding the foregoing (and except for purposes of the definition of "Unrestricted Subsidiary" contained herein) an Unrestricted Subsidiary shall be deemed not to be a Subsidiary of the Borrower or any of its Subsidiaries for purposes of this Agreement.

"Subsidiary Guarantee Agreement" shall mean the Subsidiary Guarantee Agreement dated as of the Closing Date, as may be amended, restated, supplemented or otherwise modified from time to time, between each Subsidiary Loan Party and the Administrative Agent.

"Subsidiary Loan Party" shall mean each Wholly Owned Domestic Subsidiary of the Borrower that is not an Excluded Subsidiary.

"Subsidiary Redesignation" shall have the meaning provided in the definition of "Unrestricted Subsidiary" contained in this Section 1.01.

"Successor Borrower" shall have the meaning assigned to such term in Section 6.04(a).

"Supported QFC" shall have the meaning assigned to such term in Section 9.23.

"SVC" shall mean Service Properties Trust, a Maryland real estate investment trust, and its successors and assigns.

"SVC Companies" shall mean the collective reference to SVC and its Subsidiaries; provided, that, in no event shall the SVC Companies include any Loan Party or any of their respective Subsidiaries.

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

"TA West Greenwich" shall mean TA West Greenwich LLC, a Maryland limited liability company.

"TA West Greenwich Loan Agreement" shall mean the Loan Agreement, dated as of February 6, 2020, between TA West Greenwich, as borrower, and The Washington Trust Company, as lender, as the same may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original administrative agent and lenders or other agents and lenders or otherwise, and whether provided under the original credit agreement or one or more other credit agreements, indentures, financing agreements or otherwise, including any agreement extending the maturity thereof, otherwise restructuring all or any portion of the Indebtedness thereunder, increasing the amount loaned or issued thereunder, altering the maturity thereof or providing for other Indebtedness).

"TA West Greenwich Loan Documents" shall mean the TA West Greenwich Loan Agreement and the other "Loan Documents" (as defined in the TA West Greenwich Loan Agreement).

"Target" shall have the meaning specified in the definition of "Permitted Acquisition".

"Taxes" shall mean any and all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings or other similar charges imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or other basis and any interest, fines, penalties or additions to tax with respect to the foregoing.

"Term Facility Increase" shall have the meaning specified in Section 2.22(a)(i).

"Term Facility Increase Lender" shall have the meaning specified in Section 2.22(a)(ii).

"Term Facility Maturity Date" shall mean December 14, 2027.

"Term Increase Effective Date" shall have the meaning assigned to such term in Section 2.22(a)(iv).

"Term Loan Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Term Loans hereunder (including any Incremental Term Commitment and or Specified Refinancing Term Commitment). The amount of each Lender's Term Loan Commitment as of the Closing Date is set forth on Schedule 2.01. The aggregate amount of the Term Loan Commitments as of the Closing Date is $200,000,000.

"Term Loan Installment Date" shall have the meaning assigned to such term in Section 2.10(a)(i).

"Term Loans" shall mean the Initial Term Loans, any Incremental Term Loan, any Extended Term Loan or any Specified Refinancing Term Loan.

"Termination Date" shall mean the date on which the principal of and interest on each Loan, all fees and all other expenses or amounts payable under any Loan Document and all other Loan Obligations shall have been paid in full (other than in respect of (a) contingent indemnification and expense reimbursement claims not then due and (b) obligations under or pursuant to any Secured Hedging Agreement or any Secured Cash Management Agreement).

"Test Period" shall mean, on any date of determination, the period of four consecutive fiscal quarters of the Borrower then most recently ended (taken as one accounting period) for which financial statements have been (or were required to be) delivered pursuant to Section 5.04(a) or 5.04(b); provided that prior to the first date financial statements have been delivered pursuant to Section 5.04(a) or 5.04(b), the Test Period in effect shall be the four fiscal quarter period ended September 30, 2020.

"Total Net Leverage Ratio" shall mean, with respect to any Test Period, the ratio of (A) (i) Consolidated Debt of the Borrower and its Subsidiaries outstanding as of the last day of such Test Period less (ii) the lesser of (x) $25,000,000 and (y) the amount of the Unrestricted Cash of the Borrower and its Subsidiaries on such date, to (B) EBITDA of the Borrower and its Subsidiaries for the then most recently ended Test Period, in each case, with such pro forma adjustments to Consolidated Debt and EBITDA as are appropriate and consistent with the pro forma adjustment provisions set forth in Section 1.06.

"Tranche" refers to whether such Term Loans (or Term Loan Commitments) are (i) Initial Term Loans, (ii) Incremental Term Facilities or Incremental Term Loans with the same terms and conditions, (iii) Extended Term Loans or Extended Tranches (in each case, of the same series) or (iv) Specified Refinancing Term Loans or Specified Refinancing Term Commitments (of the same series).

"Transaction Expenses" shall mean any fees or expenses incurred or paid by the Borrower or any of its Subsidiaries or any of their Affiliates in connection with (i) the Transactions, this Agreement and the other Loan Documents and (ii) the transactions contemplated hereby and thereby.

"Transactions" shall mean, collectively, (a) the execution, delivery and performance of the Loan Documents, the creation of the Liens pursuant to the Security Documents, and the initial borrowings hereunder and the use of proceeds thereof, (b) the amendment of the ABL Documents on the Closing Date and (c) the payment of all fees and expenses to be paid and owing in connection with the foregoing.

"Transformative Acquisition" shall mean an acquisition by the Borrower or any Subsidiary that is not permitted by the terms of the Loan Documents immediately prior to the consummation of such acquisition.

"Type" shall mean, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall include the Adjusted LIBO Rate and the ABR.

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

"UK Resolution Authority" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Uniform Commercial Code" shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"Unrestricted Cash" shall mean Cash Equivalents of the Borrower or any of its Subsidiaries that would not appear as "restricted" on a consolidated balance sheet of the Borrower or any of its Subsidiaries in accordance with GAAP.

"Unrestricted Subsidiary" shall mean (1) any subsidiary of the Borrower, whether now owned or acquired or created after the Closing Date, that is designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; provided that the Borrower shall only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date so long as (a) no Event of Default has occurred and is continuing or would result therefrom, (b) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by the Borrower or any of its Subsidiaries) through Investments as permitted by, and in compliance with, Section 6.03, and any prior or concurrent Investments in such Subsidiary by the Borrower or any of its Subsidiaries shall be deemed to have been made under Section 6.03, (c) without duplication of clause (b), any net assets owned by such Unrestricted Subsidiary at the time of the initial designation thereof shall be treated as Investments pursuant to Section 6.03, (d) such Unrestricted Subsidiary is also designated as an "unrestricted subsidiary" or similar term under the ABL Credit Agreement and any other Material Indebtedness of the Borrower and its Subsidiaries and (e) the Total Net Leverage Ratio as of the end of the Test Period then most recently ended (calculated on a pro forma basis) would not exceed 5.00 to 1.00 and (2) any subsidiary of an Unrestricted Subsidiary. No Unrestricted Subsidiary shall (i) hold, and neither the Borrower nor any Subsidiary shall transfer to an Unrestricted Subsidiary, any Intellectual Property that is material to the business of the Borrower and its Subsidiaries (taken as a whole) or (ii) own any Indebtedness or Equity Interests (or hold any Lien on any property of) the Borrower or any Subsidiary. The Borrower may designate any Unrestricted Subsidiary to be a Subsidiary for purposes of this Agreement (each, a "Subsidiary Redesignation"); provided that (i) no Event of Default has occurred and is continuing or would result therefrom, (ii) any Indebtedness and Investments of the applicable Subsidiary and any Liens encumbering its property existing as of the time of such Subsidiary Redesignation shall be deemed newly incurred or established, as applicable, at such time and shall comply with the requirements of Section 6.01, 6.02 and 6.03, (iii) the Borrower shall have delivered to the Administrative Agent an officer's certificate executed by a Responsible Officer of the Borrower, certifying to the best of such officer's knowledge, compliance with the requirements of preceding clauses (i) and (ii), and (iv) no Unrestricted Subsidiary shall be designated as a Subsidiary more than once. As of the Closing Date, there are no Unrestricted Subsidiaries.

"Unsecured Bonds" shall mean (a) the 8.25% Senior Notes due 2028 issued under the First Supplemental Indenture dated as of January 15, 2013 between the Borrower and U.S. Bank National Association, as trustee, (b) the 8.00% Senior Notes due 2029 issued under the Second Supplemental Indenture dated as of December 16, 2014 between the Borrower and U.S. Bank National Association, as trustee and (c) the 8.00% Senior Notes due 2030 issued under the Third Supplemental Indenture dated as of October 5, 2015 between the Borrower and U.S. Bank National Association, as trustee, in each case, issued pursuant to the Indenture dated as of January 15, 2013 between the Borrower and U.S. Bank National Association, as trustee, as amended by the Fourth Supplemental Indenture dated as of August 1, 2019 between the Borrower (as successor by statutory conversion to TravelCenters of America LLC) and U.S. Bank National Association, as trustee.

"U.S. Bankruptcy Code" shall mean Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

"U.S. Lender" shall mean any Lender other than a Foreign Lender.

"U.S. Special Resolution Regimes" shall have the meaning assigned to such term in Section 9.23.

"USA PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107 56 (signed into law October 26, 2001)).

"Voluntary Junior Prepayment" shall have the meaning assigned to such term in Section 6.08(a).

"Voting Stock" shall mean, with respect to any person, such person's Capital Stock having the right to vote for the election of members of the Board of Directors of such person under ordinary circumstances.

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years (and/or portion thereof) obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness; provided, that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended (the "Applicable Indebtedness"), the effects of any prepayments made or amortization on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

"Wholly Owned Domestic Subsidiary" shall mean a Wholly Owned Subsidiary that is also a Domestic Subsidiary.

"Wholly Owned Subsidiary" of any person shall mean a subsidiary of such person, all of the Equity Interests of which (other than directors' qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such person or another Wholly Owned Subsidiary of such person. Unless the context otherwise requires, "Wholly Owned Subsidiary" shall mean a Subsidiary of the Borrower that is a Wholly Owned Subsidiary of the Borrower.

"Withdrawal Liability" shall mean liability with respect 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.

"Working Capital" shall mean, with respect to the Borrower and the Subsidiaries on a consolidated basis at any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; provided that, for purposes of calculating Excess Cash Flow, increases or decreases in Working Capital shall be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) any reclassification in accordance with GAAP of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

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

1.02 Terms Generally.

(a) The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any agreements (including the Loan Documents), and other contractual requirements shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements, modifications, restructurings, replacements, refinancings, renewals, or increases (in each case, where applicable, whether pursuant to one or more agreements or with different lenders or agents and whether provided under the original credit agreement or one or more other credit agreements, indentures, financing agreements or otherwise, including any agreement extending the maturity thereof, otherwise restructuring all or any portion of the Indebtedness thereunder, increasing the amount loaned or issued thereunder, altering the maturity thereof or providing for other Indebtedness), but only to the extent that such amendments, restatements, amendment and restatements, extensions, supplements, modifications, replacements, restructurings, refinancings, renewals, or increases are not prohibited by any Loan Document. Unless otherwise expressly provided herein, references to any Requirement of Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting such Requirement of Law. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

(b) Notwithstanding anything in this Agreement to the contrary, unless the Borrower has notified the Administrative Agent in writing that this clause (b) shall not apply with respect to an applicable Test Period on or prior to the delivery of financial statements for such Test Period pursuant to Section 5.04, each provision under this Agreement, shall, in each case, be determined without giving effect to ASC 842 (Leases), except that financial statements delivered pursuant to Section 5.04 may be prepared in accordance with GAAP (including giving effect to ASC 842 (Leases) as in effect at the time of such delivery).

1.03 Effectuation of Transactions. Each of the representations and warranties of the Borrower contained in this Agreement (and all corresponding definitions) are made after giving effect to the Transactions as shall have taken place on or prior to the date of determination, unless the context otherwise requires.

1.04 Timing of Payment or Performance. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

1.05 Times of Day. Unless otherwise specified herein, all references herein to times of day shall be references to Local Time.

1.06 Pro Forma and Other Calculations.

(a) Notwithstanding anything to the contrary herein, financial ratios and tests, including the First Lien Net Leverage Ratio and the Total Net Leverage Ratio shall be calculated in the manner prescribed by this Section 1.06; *provided* that notwithstanding anything to the contrary in subsections (b), (c), (d) or (e) of this Section 1.06, when calculating the First Lien Net Leverage Ratio for purposes of the "Required Percentage", the events described in this Section 1.06 that occurred subsequent to the end of the applicable Test Period shall not be given pro forma effect.

(b) For purposes of calculating any financial ratio or test (or EBITDA or Consolidated Total Assets), Specified Transactions (and, subject to clause (d) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Test Period or (ii) 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 any increase or decrease in EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Consolidated 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 Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.06, then such financial ratio or test (or EBITDA or Consolidated Total Assets) shall be calculated to give pro forma effect thereto in accordance with this Section 1.06.

(c) Whenever pro forma effect is to be given to a 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, synergies (other than revenue synergies) and operating improvements projected by the Borrower in good faith to result from or relating to any Specified Transaction (including, for the avoidance of doubt, acquisitions occurring prior to the Closing Date) 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, synergies and operating improvements are taken, committed to be 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, synergies and operating improvements had been realized on the first day of such period and as if such cost savings, operating expense reductions, synergies and operating improvements 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 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 (i) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower and certified by a Financial Officer of the Borrower in an officer's certificate, (ii) 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 12 months after the date of such Specified Transaction (or such actions are undertaken or implemented prior to the consummation of such Specified Transaction), (iii) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing EBITDA (or any other components thereof), whether through a pro forma adjustment or otherwise, with respect to such period and (iv) the aggregate amount of such "run-rate" cost savings, synergies, operating expense reductions and operating improvements increasing EBITDA pursuant to this Section 1.06(c) in any Test Period, together with the amount of any "run-rate" cost savings, synergies, operating expense reductions and operating improvements added back to EBITDA for such Test Period pursuant to clause (k) of the definition thereof, shall not exceed 25% of EBITDA, calculated prior to giving effect to all such add-backs, adjustments and increases, for such Test Period on a pro forma basis.

(d) In the event that the Borrower or any 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 for working capital purposes unless such Indebtedness has been permanently repaid and not replaced), 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, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period; *provided*, *however*, that at the election of the Borrower, the pro forma calculation will not give effect to any Indebtedness incurred on such determination date pursuant to the provisions described in Section 1.07.

(e) [Reserved].

(f) Notwithstanding anything to the contrary in this Section 1.06 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, at the election of the Borrower, no pro forma effect shall be given to any discontinued operations (and the 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.

(g) [Reserved].

(h) If any Lien, Indebtedness, Asset Sale (or other disposition), Investment, Restricted Payment, Voluntary Junior Prepayment or other transaction, action, judgment or amount (any of the foregoing in concurrent transactions, a single transaction or a series of related transactions) is incurred, issued, taken or consummated in reliance on categories of baskets measured by reference to a percentage of EBITDA or Consolidated Total Assets, and any Lien, Indebtedness, Asset Sale (or other disposition), Investment, Restricted Payment, Voluntary Junior Prepayment or other transaction, action, judgment or amount (including in connection with refinancing thereof) would subsequently exceed the applicable percentage of EBITDA or Consolidated Total Assets if calculated based on the EBITDA or Consolidated Total Assets on a later date (including the date of any refinancing), such percentage of EBITDA or Consolidated Total Assets will be deemed not to be exceeded (so long as, in the case of refinancing any Indebtedness (and any related Lien), the principal amount of such newly incurred or issued Indebtedness does not exceed the maximum principal amount in respect of the Indebtedness being refinanced, extended, replaced, refunded, renewed or defeased (plus an amount equal to unpaid accrued interest, fees and premium (including tender premium) and penalties (if any) thereon, upfront fees and original issue discount and other reasonable and customary fees and expenses incurred or paid in connection with such refinancing and any existing commitment unutilized and letters of credit undrawn thereunder)).

(i) (i) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (i) calculating any applicable ratio, Consolidated Net Income, EBITDA, Consolidated Total Assets or availability under any basket in connection with the incurrence of Indebtedness, the creation of Liens, the making of any Asset Sale (or other disposition), the making of an Investment, the making of a Restricted Payment, Voluntary Junior Prepayment, the designation of a subsidiary as a Subsidiary or an Unrestricted Subsidiary, the repayment of Indebtedness or any other actions or transactions, (ii) 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, (iii) determining compliance with any provision of this Agreement which requires compliance with any representations and warranties set forth herein or (iv) determining the satisfaction of all other conditions precedent to the incurrence of Indebtedness, the creation of Liens, the making of any Asset Sale (or other disposition), the making of an Investment, the making of a Restricted Payment, Voluntary Junior Prepayment, the designation of a subsidiary as a Subsidiary or an Unrestricted Subsidiary, the repayment of Indebtedness or any other actions or transactions, in each case in connection with a Limited Condition Acquisition, 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 Acquisition, an "LCA Election," which LCA Election may be in respect of one or more of clauses (i), (ii), (iii) and (iv) above), be deemed to be the date the definitive agreements (or other relevant definitive documentation) for any such other Limited Condition Acquisition are entered into (such applicable date, the "LCA Test Date"). (ii)If, after giving pro forma effect to the Limited Condition Acquisition, any Indebtedness or other transaction in connection therewith and any actions or transactions related thereto and any related pro forma adjustments, the Borrower or any of its Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCA Test Date in compliance with such ratio, test, basket or other provisions (and any related requirements and conditions), such ratio, test, basket or other provisions (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes.

(iii) For the avoidance of doubt, (i) if, following the LCA Test Date, any of such ratios, tests, baskets or other provisions are breached as a result of fluctuations in such ratio (including due to fluctuations in EBITDA, Consolidated Total Assets or other components of such ratio), test, basket or other provisions at or prior to the consummation of the relevant Limited Condition Acquisitions, such ratios, tests, baskets and other provisions will not be deemed to have failed to have been satisfied as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (ii) subject to Section 1.06(i)(v) below, such ratios, tests, baskets and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Acquisition or related transactions.

(iv) If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio, test, basket availability or compliance with any other provision hereunder on or following the relevant LCA Test Date and prior to the earliest of the date on which such Limited Condition Acquisition is consummated, the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition or the date the Borrower makes an election pursuant to the immediately preceding sentence, any such ratio, test, basket or compliance with any other provision hereunder shall be calculated on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence or issuance of Indebtedness and the use of proceeds thereof) had been consummated on the LCA Test Date.

(v) Notwithstanding anything in this Agreement or any Loan Document to the contrary, (i) the Borrower at any time may elect, in its sole discretion, to rescind any LCA Election, in which case the relevant ratios, tests and baskets shall be recalculated, and compliance with the relevant conditions shall be determined, at the time of consummation of the applicable Limited Condition Acquisition as if such LCA Election had never been made and (ii) if financial statements for one or more subsequent fiscal quarters after the making of an LCA Election shall have been delivered, the Borrower may elect, in its sole discretion, to redetermine the applicable ratio, Consolidated Net Income, EBITDA or Consolidated Total Assets on the basis of such financial statements, in which case, such date of redetermination shall thereafter be deemed to be the applicable LCA Test Date.

1.07 Concurrent Incurrence of Fixed Amounts and Incurrence-Based Amounts. With respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement (including, without limitation, Incremental Term Facilities, Incremental Equivalent Debt and Indebtedness under the ABL Credit Agreement) that does not require compliance with a financial ratio or test (including the Total Net Leverage Ratio and/or the First Lien Net Leverage Ratio; it being understood that grower components of any non-ratio based basket based on EBITDA or Consolidated Total Assets shall not constitute a financial ratio or test) (any such amounts, the "Fixed Amounts") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement (including, without limitation, clause (x) of the definition of "Incremental Amount") that requires compliance with a financial ratio or test (including the Total Net Leverage Ratio and/or the First Lien Net Leverage Ratio) (any such amounts, the "Incurrence-Based Amounts"), the Fixed Amounts shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence-Based Amounts. In addition, any Indebtedness (and associated Liens, subject to the applicable priorities required pursuant to the applicable Incurrence-Based Amounts), Investments, prepayments of Junior Financing and Restricted Payments incurred in reliance on Fixed Amounts may be reclassified at any time, as the Borrower may elect in writing from time to time, as incurred under any applicable Incurrence-Based Amounts if the Borrower subsequently meets the applicable ratio or test for such Incurrence-Based Amounts on a pro forma basis (or would have met such ratio or test, in which case, such reclassification shall be deemed to have automatically occurred if not elected by the Borrower); provided that all Indebtedness and Liens outstanding under the Loan Documents incurred on the Closing Date (and only such Indebtedness and Liens) will be deemed to be incurred only in reliance on Section 6.01(a) and 6.02(b), respectively, and any ABL Obligations (and only the ABL Obligations) will be deemed to be incurred only in reliance on Section 6.01(b) and 6.02(a), respectively.

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

ARTICLE II

The Credits

2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Term Loans in Dollars to the Borrower on the Closing Date (the "Initial Term Loans") in an aggregate principal amount not to exceed its Term Loan Commitment. Amounts of Initial Term Loans borrowed under this Section 2.01 that are repaid or prepaid may not be reborrowed.

2.02 Loans and Borrowings. (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Term Loans or Eurocurrency Term Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Term Loan or Eurocurrency Term Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender shall not be entitled to any amounts payable under Section 2.15 or 2.17 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.

(c) Borrowings of more than one Type may be outstanding at the same time; provided, however, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than 10 Eurocurrency Borrowings outstanding at any time. Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Term Facility Maturity Date.

2.03 Requests for Borrowings. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request electronically not later than (x) with respect to the Initial Term Loan, 11:00 a.m., Local Time, one Business Day prior to the Closing Date (or such later time as the Administrative Agent may agree) and (y) with respect to any other Borrowing, (I) 11:00 a.m., Local Time, three Business Days prior to the requested date of any Borrowing of Eurocurrency Term Loans and (II) 11:00 a.m. one Business Day prior to the requested date of any Borrowing of ABR Term Loans (in the case of any of the foregoing, or such other timeframe that is acceptable in the sole discretion of the Administrative Agent). Each such Borrowing Request shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing;

(iv) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and

(v) the location and number of the account or accounts to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

2.04 [Reserved].

2.05 [Reserved].

2.06 Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Local Time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account or accounts designated by the Borrower as specified in the applicable Borrowing Request.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with clause (a) of this Section 2.06 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of (A) the Federal Funds Effective Rate and (B) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to ABR Term Loans at such time. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

2.07 Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone or by electronic means, by the time that a Borrowing Request would be required under Section 2.03 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall (unless otherwise agreed by the Administrative Agent) be irrevocable and shall be confirmed promptly by hand delivery or electronic means to the Administrative Agent of a written Interest Election Request signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(iv) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. If less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall be in an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum and satisfy the limitations specified in Sections 2.02(c) regarding the maximum number of Borrowings of the relevant Type.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender to which such Interest Election Request relates of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurocurrency Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (ii) unless repaid, each Eurocurrency Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

2.08 Termination of Commitments. On the Closing Date (after giving effect to the funding of the Term Loans to be made on such date), the Term Loan Commitments of each Lender as of the Closing Date will terminate.

2.09 Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10.

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

(c) The Administrative Agent shall maintain the Register in accordance with Section 9.04(b).

(d) The entries made in the accounts maintained pursuant to clause (b) or (c) of this Section 2.09 shall be prima facie evidence of the existence and amounts of the obligations recorded therein (absent manifest error); provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement. In the event of any conflict between the records maintained by any Lender and the records maintained by the Administrative Agent in such matters, the records of the Administrative Agent shall control in the absence of manifest error.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note (a "Note"). In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, unless otherwise agreed to by the applicable Lender, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

2.10 Repayment of Term Loans. (a) Subject to the other clauses of this Section 2.10,

(i) the Borrower shall repay Initial Term Loans incurred on the Closing Date on the last day of each March, June, September and December of each year (commencing on March 31, 2021) and on the Term Facility Maturity Date or, if any such date is not a Business Day, on the next preceding Business Day (each such date being referred to as a "Term Loan Installment Date"), in an aggregate principal amount of such Initial Term Loans equal to (A) in the case of quarterly payments due prior to the Term Facility Maturity Date, an amount equal to 0.25% of the aggregate principal amount of such Initial Term Loans outstanding immediately after the Closing Date, and (B) in the case of such payment due on the Term Facility Maturity Date, an amount equal to the then unpaid principal amount of such Initial Term Loans outstanding; and

(ii) to the extent not previously paid, outstanding Initial Term Loans shall be due and payable on the Term Facility Maturity Date.

(b) (i) The principal amount of Incremental Term Loans of each Lender shall be repaid by the Borrower as provided in the applicable Incremental Amendment in respect of such Incremental Term Loans as contemplated by Section 2.22(b), subject to the requirements of Section 2.22(b) (which installments shall, to the extent applicable, be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Sections 2.10(c), (d) and (e), or be increased as a result of any increase in the amount of Incremental Term Loans pursuant to Section 2.22(a) (such increased amortization payments to be calculated in the same manner (and on the same basis) as the schedule set forth in the Incremental Amendment in respect of such Incremental Term Loans as contemplated by Section 2.22(a) for the initial incurrence of such Incremental Term Loans)), and, to the extent not previously paid, each Incremental Term Loan shall be due and payable on the Maturity Date applicable to such Incremental Term Loans, (ii) the principal amount of Specified Refinancing Term Loans of each Lender shall be repaid by the Borrower as provided in the applicable Refinancing Amendment, subject to the requirements of Section 2.25 (which installments shall, to the extent applicable, be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Sections 2.10(c), (d) and (e), or be increased as a result of any increase in the amount of Specified Refinancing Term Loans pursuant to Section 2.22(a) (such increased amortization payments to be calculated in the same manner (and on the same basis) as the schedule set forth in the Refinancing Amendment for the initial incurrence of such Specified Refinancing Term Loans)), and, to the extent not previously paid, each Specified Refinancing Term Loan shall be due and payable on the Maturity Date applicable to such Specified Refinancing Term Loans and (iii) the principal amount of Extended Term Loans of each Extending Lender shall be repaid by the Borrower as provided in the applicable Extension Amendment as contemplated by Section 2.24, subject to the requirements of Section 2.24 (which installments shall, to the extent applicable, be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Sections 2.10(c), (d) and (e), or be increased as a result of any increase in the amount of Extended Term Loans pursuant to Section 2.22(a) (such increased amortization payments to be calculated in the same manner (and on the same basis) as the schedule set forth in the amendment to this Agreement in respect of such Extended Term Loans as contemplated by Section 2.24)), and, to the extent not previously paid, each Extended Term Loan shall be due and payable on the Maturity Date applicable to such Extended Term Loans.

(c) Prepayment of the Loans required with respect to Net Proceeds pursuant to Section 2.11(b) and Excess Cash Flow pursuant to Section 2.11(c) shall be allocated to the Term Loans determined pursuant to Sections 2.10(d) and (e), with the application thereof to reduce in direct order amounts due on the succeeding Term Loan Installment Dates as provided in the remaining scheduled amortization payments; provided that any Lender, at its option, may elect to decline any such prepayment of any Term Loan held by it if it shall give written notice to the Administrative Agent thereof by 5:00 p.m. Local Time at least three Business Days prior to the date of such prepayment (any such Lender, a "Declining Lender") and on the date of any such prepayment, any amounts that would otherwise have been applied to prepay Term Loans owing to Declining Lenders (such amounts, the "Declined Proceeds") shall instead be retained by the Borrower for application for any purpose not prohibited by this Agreement. Any optional prepayments of the Term Loans pursuant to Section 2.11(a) shall be applied to the remaining installments of the Term Loans as the Borrower may in each case direct (and absent such direction in direct order of maturity).

(d) Prior to any prepayment of any Loan hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall notify the Administrative Agent by electronic means or by telephone (confirmed by electronic means) of such selection not later than 2:00 p.m., Local Time, (i) in the case of an ABR Borrowing, at least one Business Day before the scheduled date of such prepayment and (ii) in the case of a Eurocurrency Borrowing, at least three Business Days before the scheduled date of such prepayment (or, in each case, such shorter period acceptable to the Administrative Agent); provided that a notice of prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, indentures or similar agreements or other transactions, in which case such notice may be revoked or delayed by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied (or waived by the Borrower in its sole discretion) and/or rescinded at any time by the Borrower if the Borrower determines in its sole discretion that any or all of such conditions will not be satisfied (or waived). Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. All repayments of Loans shall be accompanied by accrued interest on the amount repaid to the extent required by Section 2.13(d).

(e) Subject to Sections 2.10(c), 2.11(b) and 2.11(c), except as may otherwise be set forth in any Incremental Amendment, any Refinancing Amendment or any Extension Amendment, each prepayment of Term Loans required by Section 2.11(b) or (c) shall be allocated *pro rata* among the Initial Term Loans and any new Term Loans, Specified Refinancing Term Loans and Extended Term Loans then outstanding based on the applicable remaining principal amounts due thereunder and shall be applied within each Tranche of Term Loans in respect of such Term Loans in direct forward order of scheduled maturity thereof; *provided* that (x) any Tranche of new Term Loans, Specified Refinancing Term Loans and Extended Term Loans may specify that one or more other Tranches of Term Loans may be prepaid prior to such Tranche of new Term Loans, Specified Refinancing Term Loans and Extended Term Loans and (y) any prepayment of Term Loans with the Net Proceeds of, or in exchange for, Credit Agreement Refinancing Indebtedness or Specified Refinancing Debt pursuant to Section 2.11(b) shall be applied solely to each applicable Tranche or Tranches of Term Loans being refinanced as selected by the Borrower. Any optional prepayments of the Term Loans pursuant to Section 2.11(a) shall be applied to the Tranche or Tranches of Term Loans as the Borrower may in each case direct (and absent such direction in direct order of maturity).

2.11 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Loan in whole or in part, without premium or penalty (but subject to Section 2.12(b) and Section 2.16), in an aggregate principal amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum or, if less, the amount outstanding, subject to prior notice in accordance with Section 2.10(d).

(b) The Borrower shall apply an amount equal to all Net Proceeds promptly following receipt thereof to prepay Term Loans in accordance with clauses (c), (d) and (e) of Section 2.10. Notwithstanding the foregoing,

(i) if at the time that any such prepayment would be required on account of a Prepayment Event, the Borrower (or any Subsidiary) is required to Discharge any Other Applicable Indebtedness with Other Applicable Net Proceeds pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Subsidiary) may apply such Net Proceeds otherwise required to repay the Term Loans pursuant to this Section 2.11(b) on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such Discharge at such time), to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.11(b) shall be reduced accordingly (provided that the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof and the remaining amount, if any, of such portion of Net Proceeds shall be allocated to the Term Loans to the extent required in accordance with the terms of this Section 2.11(b)); and

(ii) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of such Net Proceeds, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.11(b).

(c) Not later than five Business Days after the date on which the annual financial statements are, or are required to be, delivered under Section 5.04(a) with respect to each Excess Cash Flow Period, the Borrower shall calculate Excess Cash Flow for such Excess Cash Flow Period and the Borrower shall apply an amount equal to (i) the amount by which the Required Percentage of such Excess Cash Flow exceeds $2,500,000 minus (ii) to the extent not financed using the proceeds of the incurrence of funded term Indebtedness, the amount actually paid in cash in respect of any voluntary payments or repurchases, and repayments to Non-Consenting Lenders, in respect of the Term Loans (including any Incremental Term Loans), any Incremental Equivalent Debt and any Specified Refinancing Debt and the ABL Obligations and any other revolving facility permitted pursuant to Section 6.01 (to the extent accompanied by a permanent reduction of the commitments thereunder), in each case, to the extent such Indebtedness is secured by Liens that are pari passu with the Liens securing the Initial Term Loans, during such Excess Cash Flow Period (plus, without duplication of any amounts previously deducted under this clause (ii), the amount of any such voluntary payments or repurchases after the end of such Excess Cash Flow Period but before the date of prepayment under this clause (c)) (which, in the case of such Indebtedness prepaid or repurchased at a discount to par, will be limited to the actual amount of cash paid to lenders in connection with such prepayment or repurchase (as opposed to the face amount of the loans so prepaid or repurchased) (except to the extent financed with long-term indebtedness (other than revolving indebtedness or intercompany debt) and without duplication in subsequent periods in the case of prepayments after the end of a fiscal year and prior to such prepayment date)). Such calculation will be set forth in a certificate signed by a Financial Officer of the Borrower delivered to the Administrative Agent setting forth the amount, if any, of Excess Cash Flow for such fiscal year, the amount of any required prepayment in respect thereof and the calculation thereof in reasonable detail. Notwithstanding the foregoing,

(i) if at the time that any such prepayment would be required, the Borrower (or any Subsidiary) is required to Discharge Other Applicable Indebtedness with Other Applicable ECF pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Subsidiary) may apply such portion of Excess Cash Flow otherwise required to repay the Term Loans pursuant to this Section 2.11(c) on a pro rata basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such Discharge at such time) to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.11(c) shall be reduced accordingly (provided that the portion of such Excess Cash Flow allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable ECF required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof and the remaining amount, if any, of such portion of Excess Cash Flow shall be allocated to the Term Loans to the extent required in accordance with the terms of this Section 2.11(c)); and

(ii) to the extent the lenders or holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of Excess Cash Flow, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.11(c).

2.12 Fees(a). (a) The Borrower agrees to pay to the Administrative Agent, for the account of the Administrative Agent, the "Agency Fee" as set forth in the Fee Letter, at the times specified therein. The Borrower agrees to pay to the Collateral Agent, for the account of the Collateral Agent, the amounts set forth in the Collateral Agent Fee Letter, at the times specified therein.

(b) In the event that the Initial Term Loans are prepaid pursuant to Section 2.11(a) or Section 2.11(b) (in the case of Section 2.11(b), solely with respect to prepayments made with Net Proceeds described in clause (b) of the definition thereof), the Borrower shall pay to the Administrative Agent, for the ratable account of each Lender holding all or any portion of Initial Term Loans that are so prepaid, (i) if so prepaid prior to the second anniversary of the Closing Date, a prepayment premium equal to the Applicable Premium on all such Initial Term Loans that are so prepaid and (ii) if so prepaid on or after the second anniversary of the Closing Date, no prepayment premium. Such amounts shall be due and payable on the date of such prepayment. If, prior to the second anniversary of the Closing Date, (x) any Lender that is a Non-Consenting Lender is replaced pursuant to Section 2.19(c), such Lender (and not any Person who replaces such Lender pursuant to Section 2.19(c)) shall receive its portion (as determined immediately prior to it being so replaced) of the premium described in the preceding sentence as if the Initial Term Loans held by such Lender were prepaid pursuant to Section 2.11(a) or (y) any Lender that is a Non-Extending Lender is replaced pursuant to Section 2.24(e), such Lender (and not any Person who replaces such Lender pursuant to Section 2.24(e)) shall receive its portion (as determined immediately prior to it being so replaced) of the premium described in the preceding sentence as if the Initial Term Loans held by such Lender were prepaid pursuant to Section 2.11(a).

(c) In the event that the Term Loans are prepaid pursuant to Section 2.11(b) (solely with respect to prepayments made with Net Proceeds described in clause (a) of the definition thereof on account of a voluntary Asset Sale), the Borrower shall pay to the Administrative Agent, for the ratable account of each Lender holding all or any portion of Term Loans that are so prepaid, (i) if so prepaid prior to the first anniversary of the Closing Date, a prepayment premium equal to 6.00% on all such Term Loans that are so prepaid, (ii) if so prepaid on or after the first anniversary of the Closing Date and prior to the second anniversary of the Closing Date, a prepayment premium equal to 3.00% on all such Term Loans that are so prepaid and (iii) if so prepaid on or after the second anniversary of the Closing Date, no prepayment premium. Such amounts shall be due and payable on the date of such prepayment.

(d) All fees hereunder shall be paid on the dates due, in immediately available funds in Dollars, to the Administrative Agent for distribution, if and as appropriate, among the Lenders. Once paid, none of the fees shall be refundable under any circumstances.

2.13 Interest. (a) The Loans comprising each ABR Borrowing shall bear interest at the ABR plus the Applicable Margin.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fees or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding clauses of this Section 2.13 or (ii) in the case of any other overdue amount, 2.00% plus the rate applicable to ABR Term Loans as provided in clause (a) of this Section; provided that this clause (c) shall not apply to any Event of Default that has been waived by the Lenders pursuant to Section 9.08.

(d) Accrued interest on each Loan shall be payable in arrears (i) on each Interest Payment Date for such Loan and (ii) on the Term Facility Maturity Date; provided that (A) interest accrued pursuant to clause (c) of this Section 2.13 shall be payable on demand, (B) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any Eurocurrency Term Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

2.14 Alternate Rate of Interest. (a) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents,

(i) if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined, that adequate and reasonable means do not exist for ascertaining Adjusted LIBO Rate for any requested Interest Period, including, without limitation, because the LIBO Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the Administrative Agent shall have received notice from the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making, funding or maintaining their Eurocurrency Term Loans for such Interest Period,

then the Administrative Agent shall give written notice thereof (or telephonic notice, promptly confirmed in writing) to the Borrower and to the Lenders as soon as practicable thereafter. Until the Administrative Agent shall notify the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (x) the obligations of the Lenders to continue or convert outstanding Loans as or into Eurocurrency Term Loans shall be suspended and (y) all such affected Loans shall be converted into ABR Term Loans on the last day of the then current Interest Period applicable thereto unless the Borrower prepays such Loans in accordance with this Agreement.

(b) Benchmark Replacement Setting.

(i) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Local Time) on the fifth Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(ii) In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any Benchmark Replacement Date and the related Benchmark Replacement, (B) the effectiveness of any Benchmark Replacement Conforming Changes, (C) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (iv) below and (D) the commencement of any Benchmark Unavailability Period. For the avoidance of doubt, any notice required to be delivered by the Administrative Agent as set forth in this Section 2.14 may be provided, at the option of the Administrative Agent (in its sole discretion), in one or more notices and may be delivered together with, or as part of any amendment which implements any Benchmark Replacement or Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(iv) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (I) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (II) if a tenor that was removed pursuant to clause (I) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurocurrency Borrowing of, conversion to or continuation of Eurocurrency Term 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 ABR Term Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

(vi) The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to (A) the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBO Rate" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation any Benchmark Replacement implemented hereunder), (B) the composition or characteristics of any such Benchmark Replacement, including whether it is similar to, or produces the same value or economic equivalence to USD LIBOR (or any other Benchmark) or have the same volume or liquidity as did USD LIBOR (or any other Benchmark), (C) any actions or use of its discretion or other decisions or determinations made with respect to any matters covered by this Section 2.14 including, without limitation, whether or not a Benchmark Transition Event has occurred, the removal or lack thereof of unavailable or non-representative tenors, the implementation or lack thereof of any Benchmark Replacement Conforming Changes, the delivery or non-delivery of any notices required by clause (iv) above or otherwise in accordance herewith, and (D) the effect of any of the foregoing provisions of this Section 2.14.

(vii) As used in this Section 2.14:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to this Section 2.14.

"Benchmark" means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to this Section 2.14.

"Benchmark Replacement" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion.

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the then current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of "Benchmark Replacement," the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor; and (b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of "Benchmark Replacement," the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, the formula for calculating any successor rates identified pursuant to the definition of "Benchmark Replacement", the formula, methodology or convention for applying the successor Floor to the successor Benchmark Replacement and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Replacement Date" means the earliest to occur of the following events with respect to the then-current Benchmark:

(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 such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(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; or

(3) in the case of an Early Opt-in Election, the sixth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (Local Time) on the fifth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 2.14.

"Corresponding Tenor" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for syndicated business loans; provided that, if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"Early Opt-in Election" means, if the then-current Benchmark is USD LIBOR, the occurrence of the following on or after December 31, 2020:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding Dollar-denominated syndicated credit facilities in the U.S. syndicated loan market at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, Term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

"ISDA Definitions" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"Reference Time" with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Term SOFR" means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"USD LIBOR" means the London interbank offered rate for Dollars.

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

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) subject the Administrative Agent or any Lender to any Tax with respect to any Loan Document (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes); or

(iii) impose on any Lender or the London interbank market any other condition (other than Taxes) affecting this Agreement or Eurocurrency Term Loans made by such Lender that is not otherwise reimbursed hereunder;

and the result of any of the foregoing shall be to increase the cost to the Administrative Agent or such Lender of making or maintaining any Eurocurrency Term Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate the Administrative Agent or such Lender for such additional costs incurred or reduction suffered promptly after the Administrative Agent or such Lender has made a request in compliance with this Section 2.15.

(b) If any Lender determines that any Change in Law regarding capital requirements or liquidity has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered promptly after such Lender has made a request in compliance with this Section 2.15.

(c) A certificate of a Lender or the Administrative Agent setting forth the amount or amounts necessary to compensate such Lender or its holding company or the Administrative Agent, as applicable, as specified in clause (a) or (b) of this Section 2.15 shall be delivered to the Borrower and shall be conclusive absent manifest error; provided that any such certificate claiming amounts described in clause (x) or (y) of the definition of "Change in Law" shall, in addition, state the basis upon which such amount has been calculated and certify that such Lender's or the Administrative Agent's demand for payment of such costs hereunder, and such method of allocation is not inconsistent with its treatment of other borrowers which, as a credit matter, are similarly situated to the Borrower and which are subject to similar provisions. The Borrower shall pay such Lender or the Administrative Agent, as applicable, the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Promptly after any Lender or the Administrative Agent has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or the Administrative Agent shall notify the Borrower thereof. Failure or delay on the part of any Lender or the Administrative Agent to demand compensation pursuant to this Section 2.15 shall not constitute a waiver of such Lender's or the Administrative Agent's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the Administrative Agent pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or the Administrative Agent notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Administrative Agent's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof.

2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency Term Loan prior to the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurocurrency Term Loan prior to the last day of the Interest Period applicable thereto, (c) the failure to borrow (other than due to the default of the relevant Lender), convert, continue or prepay any Eurocurrency Term Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurocurrency Term Loan prior to the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense (excluding loss of anticipated profits or Applicable Margin) attributable to such event promptly after such Lender has made a request in compliance with this Section 2.16. In the case of a Eurocurrency Term Loan, such loss, cost or expense (which shall not include loss of anticipated profits or Applicable Margin) to any Lender shall be deemed to be the amount determined by such Lender (it being understood that the deemed amount shall not exceed the actual amount) to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Term Loan, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the eurocurrency market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.16 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 15 days after receipt thereof.

2.17 Taxes. (a) Any and all payments made by or on account of any obligation of a Loan Party under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes; provided that, if a Loan Party, any Agent or any other applicable withholding agent shall be required by applicable Requirement of Law to deduct or withhold any Taxes from such payments, then (i) the applicable withholding agent shall make such deductions or withholdings as are reasonably determined by the applicable withholding agent to be required by any applicable Requirement of Law, (ii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority within the time allowed and in accordance with applicable Requirement of Law, and (iii) to the extent withholding or deduction is required to be made on account of Indemnified Taxes or Other Taxes, the sum payable by the Loan Party shall be increased as necessary so that after all required deductions and withholdings have been made (including deductions or withholdings applicable to additional sums payable under this Section 2.17) any Lender (or where any Agent receives the payment for its own account, such Agent) receives an amount equal to the sum it would have received had no such deductions or withholdings been made. After any payment of Taxes by any Loan Party to a Governmental Authority as provided in this Section 2.17, the Borrower shall deliver to the Administrative Agent a copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by applicable Requirements of Law to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(b) Without duplication of other amounts payable by the Borrower under this Section 2.17, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Requirement of Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) The Borrower shall indemnify and hold harmless each Agent and each Lender within 15 Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes payable or paid by, or required to be withheld or deducted from a payment to, such Agent or such Lender, as applicable, as the case may be (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or by an Agent (as applicable) on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(d) Each Lender shall deliver to the Borrower and the Administrative Agent, at such time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not any payments made hereunder or under any other Loan Document are subject to withholding of Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, any such withholding of Taxes in respect of any payments to be made to such Lender by any Loan Party pursuant to any Loan Document or otherwise to establish such Lender's status for withholding Tax purposes in the applicable jurisdiction. In addition, any Lender, if 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 Sections 2.17(e)(i)(A) through (D), 2.17(g) and 2.17(h) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(e) Without limiting the generality of Section 2.17(d), each Foreign Lender with respect to any Loan made to the Borrower shall, to the extent it is legally eligible to do so:

(i) deliver to the Borrower and the Administrative Agent, prior to the date on which the first payment to the Foreign Lender is due hereunder, two copies of (A) in the case of a Foreign Lender claiming exemption from U.S. federal withholding Tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest," IRS Form W-8BEN or W-8BEN-E, as applicable, (or any applicable successor form) (together with a certificate (substantially in the form of an applicable Exhibit G hereto, such certificate, the "Non-Bank Tax Certificate") certifying that such Foreign Lender is not a bank for purposes of Section 881(c) of the Code, is not a "10-percent shareholder" (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrower and is not a CFC related to the Borrower (within the meaning of Section 864(d)(4) of the Code), and that the interest payments in question are not effectively connected with the conduct by such Lender of a trade or business within the United States of America), (B) IRS Form W-8BEN or W-8BEN-E, as applicable, or Form W-8ECI or W-8EXP (or any applicable successor form), in each case properly completed and duly executed by such Foreign Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding Tax on payments by the Borrower under this Agreement, (C) IRS Form W-8IMY (or any applicable successor form) and all necessary attachments (including the forms described in clauses (A) and (B) above and 2.17(g) below from each beneficial owner, provided that if the Foreign Lender is a partnership, and one or more of the partners is claiming portfolio interest treatment, the Non-Bank Tax Certificate may be provided by such Foreign Lender on behalf of such partners) or (D) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(ii) deliver to the Borrower and the Administrative Agent two further copies of any such form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or invalid, and after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent.

Any Foreign Lender that becomes legally ineligible to update any form or certification previously delivered shall promptly notify the Borrower and the Administrative Agent in writing of such Foreign Lender's inability to do so.

Each person that shall become a Participant pursuant to Section 9.04 or a Lender pursuant to Section 9.04 shall, upon the effectiveness of the related transfer, be required to provide all the forms and statements required pursuant to this Section 2.17; provided that a Participant shall furnish all such required forms and statements solely to the person from which the related participation shall have been purchased.

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 2.17.

(f) If any Lender or any Agent, as applicable, determines, in its sole discretion exercised in good faith, that it has received a refund of an Indemnified Tax or Other Tax as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), then the Lender or such Agent, as the case may be, shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund) (net of all reasonable out-of-pocket expenses, including Taxes, of such Lender or such Agent, as the case may be, and without interest other than any interest received thereon from the relevant Governmental Authority with respect to such refund). The Loan Party, upon the request of the Lender or the Agent agrees to repay the amount paid over pursuant to this clause (f) to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender or the Agent in the event the Lender or the Agent is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (f), in no event will the Lender or the Agent be required to pay any amount to a Loan Party pursuant to this clause (f) the payment of which would place the Lender or the Agent in a less favorable net after-Tax position than the Lender or the Agent would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. No Lender nor any Agent shall be obligated to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other person.

(g) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent two IRS Forms W-9 (or substitute or successor form), properly completed and duly executed, certifying that such U.S. Lender is exempt from U.S. federal backup withholding (i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement), (ii) on or before the date that such form expires or becomes obsolete or invalid, (iii) after the occurrence of a change in the U.S. Lender's circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent, and (iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

(h) Without limiting the generality of Section 2.17(d), if a payment made to any Lender or any Agent under this Agreement or any other Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender or such Agent were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender or such Agent 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, to determine whether such Lender or Agent has or has not complied with such Lender's or Agent's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 2.17(h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(i) The agreements in this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or the Collateral Agent or any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the payment of the Loans and all other amounts payable under any Loan Document.

For purposes of this Section 2.17, the terms "applicable law" and "applicable Requirement of Law" include FATCA.

2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Sections 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m., Local Time, on the date when due, in immediately available funds. Each such payment shall be made without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day solely for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative Agent, except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.05 shall be made directly to the persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. Except as otherwise expressly provided herein, if any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments made under the Loan Documents shall be made in Dollars. Any payment required to be made by the Administrative Agent hereunder shall be deemed to have been made by the time required if the Administrative Agent shall, at or before such time, have taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(b) Subject to Section 7.02, if at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest and fees then due from the Borrower hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment of any principal of, or interest on, any of its Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Term Loans and accrued interest thereon than the proportion received by any other Lender entitled to receive the same proportion of such payment, then the Lender receiving such greater proportion shall purchase participations in the Term Loans of such other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders entitled thereto ratably in accordance with the principal amount of each such Lender's respective Term Loans and accrued interest thereon; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this clause (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.06 or 2.18(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

2.19 Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or any event that gives rise to the operation of Section 2.20, 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 reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17 or mitigate the applicability of Section 2.20, as applicable, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment within 15 days after written request from such Lender (accompanied by reasonable back-up documentation).

(b) If (i) any Lender requests compensation under Section 2.15 or gives notice under Section 2.20, or (ii) 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 2.17, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require any such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, to the extent consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15, payments required to be made pursuant to Section 2.17 or a notice given under Section 2.20, such assignment will result in a reduction in such compensation or payments. No action by or consent of the removed Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment the Borrower, Administrative Agent, such removed Lender and the replacement Lender shall otherwise comply with Section 9.04, provided that, if such removed Lender does not comply with Section 9.04 within one Business Day after the Borrower's request, compliance with Section 9.04 shall not be required to effect such assignment.

(c) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.08 requires the consent of all of the Lenders affected (or all of the Lenders affected of a given Tranche) and with respect to which the Required Lenders (or Required Facility Lenders of the applicable Tranche) shall have granted their consent, then the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) at its sole expense to replace such Non-Consenting Lender by requiring such Non-Consenting Lender to (and any such Non-Consenting Lender agrees that it shall, upon the Borrower's request) assign its Loans and its Commitments hereunder to one or more assignees in accordance with and subject to the restrictions contained in Section 9.04 (and the Borrower shall have received the prior written consent of the Administrative Agent, to the extent consent would be required under Section 9.04(b) for an assignment of Loans or Commitments, as applicable, which consent shall not unreasonably be withheld); provided that: (a) all Loan Obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment, (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon and the replacement Lender or, at the option of the Borrower, the Borrower shall pay any amount required by Section 2.12(b), if applicable, and (c) the replacement Lender shall grant its consent with respect to the applicable proposed amendment, waiver, discharge or termination. No action by or consent of the Non-Consenting Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment the Borrower, the Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 9.04; provided that, if such Non-Consenting Lender does not comply with Section 9.04 within one Business Day after the Borrower's request, compliance with Section 9.04 shall not be required to effect such assignment.

2.20 Illegality. Subject to the provisions of Section 2.14, if any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Eurocurrency Term Loans, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Term Loans or to convert ABR Borrowings to Eurocurrency Borrowings shall be suspended 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, the Borrower shall upon demand from such Lender (with a copy to the Administrative Agent), convert all Eurocurrency Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so converted.

2.21 [Reserved].

2.22 Increase in Term Facility and New Incremental Term Facility.

(a) Increase in Term Facility

(i) The Borrower may from time to time, upon written notice by the Borrower to the Administrative Agent specifying the proposed amount thereof, request an increase from any Lender or any Additional Lender, in any Tranche of Term Loans (each, a "Term Facility Increase") (which shall be on the same terms as (other than with respect to upfront fees, original issue discount and customary arrangement or commitment fees)), and become part of, the applicable Tranche of Term Loans hereunder (except as otherwise provided in Sections 2.22(a)(iv) and 2.22(a)(vi)) by an aggregate principal amount not to exceed, at the time of incurrence (or, in the case of an incurrence to finance a Limited Condition Acquisition, as of the applicable LCA Test Date), the Incremental Amount; provided that any such request for a Term Facility Increase shall be in a minimum amount of the lesser of (x) $10,000,000 and (y) the entire amount of any Term Facility Increase that may be requested under this Section 2.22(a).

(ii) A Term Facility Increase may be made by an existing Lender (but no existing Lender will have an obligation to make any Term Facility Increase) or any other person to whom an assignment of Term Loans would have been permitted pursuant to Section 9.04 (each, a "Term Facility Increase Lender"); provided that (x) the Administrative Agent shall have the right to consent (such consent not to be unreasonably conditioned, withheld or delayed) to such person's providing such portion of the Term Facility Increase if such consent of the Administrative Agent would be required under Section 9.04 for an assignment of Term Loans or Term Loan Commitments to such person and (y) the Borrower shall first offer to the existing Lenders a bona fide opportunity to provide the entire amount of each Term Facility Increase on terms specified by the Borrower (on a ratable basis among the existing Lenders based on the aggregate principal amount of the Loans held by them at such time) and, if any existing Lender declines to provide its pro rata share of such Term Facility Increase, the Borrower shall offer such declined portion of such Term Facility Increase to the existing Lenders that have agreed to provide their pro rata shares of such Term Facility Increase (on a ratable basis among the applicable existing Lenders based on the aggregate principal amount of the Loans held by them at such time), and, to the extent that any amount of such Term Facility Increase has not been agreed to be provided by the existing Lenders within three (3) Business Days after such offer, the Borrower may then offer to other persons (which may include the existing Lenders) an opportunity to provide such declined portion of such Term Facility Increase on such terms (it being understood and agreed that such offer to any Lender may be accepted by one or more Affiliates and/or Approved Funds of such Lender irrespective of whether any such Affiliates or Approved Funds are then Lenders (as determined by the Lender receiving such offer in its sole discretion)).

(iii) [Reserved].

(iv) If any Term Facility is increased in accordance with this Section 2.22(a), the Administrative Agent and the Borrower shall determine the effective date (the "Term Increase Effective Date") and the final allocation of such Term Facility Increase among the applicable Term Facility Increase Lenders. The Administrative Agent shall promptly notify the applicable Lenders of the final allocation of such increase and the Term Increase Effective Date. As of the Term Increase Effective Date, the amortization schedule for the Term Facility subject to the Term Facility Increase set forth in Section 2.10(a) (or any other applicable amortization schedule for the relevant Term Facility) shall be amended in a writing (which may be executed and delivered solely by the Borrower and the Administrative Agent) to increase the then-remaining unpaid installments of principal by an aggregate amount equal to the additional Term Loans being made on such date, such aggregate amount to be applied to increase such installments ratably in accordance with the amounts in effect immediately prior to the Term Increase Effective Date. In addition, in connection with any Term Facility Increase pursuant to this Section 2.22(a), the Lenders hereby authorize the Administrative Agent to enter into amendments (which may be executed and delivered solely by the Borrower and the Administrative Agent) to this Agreement and the other Loan Documents with the Borrower as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in order to (i) give effect to such Term Facility Increase in accordance with its terms as set forth herein and (ii) at the option of the Borrower in consultation with the Administrative Agent, incorporate terms that would be favorable to existing Lenders of the applicable Tranche or Tranches for the benefit of such existing Lenders of the applicable Tranche or Tranches including, for the avoidance of doubt, any increase in the applicable yield relating to any existing Tranche of Term Loans to achieve fungibility for U.S. federal income tax purposes with any existing Tranche of Term Loans.

(v) Such Term Facility Increase shall become effective, as of the applicable Term Increase Effective Date; provided that (i) no Default or Event of Default shall have occurred and be continuing or would result after giving effect to such Term Facility Increase (or, in the case of a Term Facility Increase incurred to finance a Limited Condition Acquisition, no Default or Event of Default shall have occurred and be continuing as of the applicable LCA Test Date or would result therefrom and no Default or Event of Default shall have occurred and be continuing under Section 7.01(b), (c), (h) or (i) as of the date the of the consummation of such Limited Condition Acquisition or would result therefrom), (ii) after giving effect to the making of any Term Loans or the effectiveness of any Term Facility Increase, the conditions set forth in Section 4.02(b) shall be satisfied (or, in the case of an Term Facility Increase incurred to finance a Limited Condition Acquisition, the condition set forth in this clause (ii) shall be limited to the Specified Representations and the Specified Acquisition Agreement Representations (and not any other representations or warranties) (conformed as necessary for such acquisition)); (iii) each Term Facility Increase shall be effected pursuant to one or more joinder agreements and/or amendments executed and delivered by the Borrower and the Term Facility Increase Lenders, and to the extent applicable, the Administrative Agent, and each of which shall be recorded in the Register, (iv) to the extent reasonably requested by the Term Facility Increase Lenders, the Administrative Agent shall have received board or other applicable resolutions, officers' certificates (including solvency certificates), legal opinions, good standing certificates and/or reaffirmation agreements (and/or such amendments to the Security Documents) consistent in all material respects with those delivered on the Closing Date under Section 4.01 with respect to the Loan Parties and evidencing the approval of such Term Facility Increase by the Loan Parties, and (v) all fees and expenses owing in respect of such Term Facility Increase to the Administrative Agent and the applicable Lenders shall have been paid. The additional Term Loans made pursuant to any Term Facility Increase shall be made by the applicable Lenders participating therein pursuant to the procedures set forth in Section 2.02.

(vi) The Term Loans incurred pursuant to any Term Facility Increase shall have the same Applicable Margin (subject to the proviso in this clause (vi)) as, and shall otherwise be on the same terms as, the Term Facility to which such Term Loans are being added; provided that if the Applicable Margin for the Term Loans to be increased pursuant to such Term Facility Increase shall be higher than the Applicable Margin for the Term Facility to which such Term Loans are being added, then the Applicable Margin for such Term Facility shall be automatically increased as and to the extent needed to eliminate such deficiency.

(vii) On the date of the making of such new Term Loans, and notwithstanding anything to the contrary set forth in Section 2.01, such new Term Loans shall be added to (and constitute a part of) each borrowing of outstanding Term Loans of the applicable Tranche of the same Type with the same Interest Period on a pro rata basis (based on the relative sizes of the various outstanding Borrowings), so that each Lender will participate proportionately in each then outstanding borrowing of Term Loans of the same Type with the same Interest Period of the respective Tranche.

(viii) To the extent the provisions of preceding clause (vii) require that Term Facility Increase Lenders making new Term Loans add such Term Loans to the then outstanding borrowings of Eurocurrency Term Loans of the respective Term Facility, it is acknowledged that the effect thereof may result in such new Term Loans having short Interest Periods (i.e., an Interest Period that began during an Interest Period then applicable to outstanding Eurocurrency Term Loans of the respective Tranche and which will end on the last day of such Interest Period).

(b) New Incremental Term Facility.

(i) The Borrower may from time to time, upon notice by the Borrower to the Administrative Agent, request, from any Lender or any Additional Lender, to add one or more new term loan facilities (each, an "Incremental Term Facility"; and any commitment made by a Lender thereunder, an "Incremental Term Commitment", and any advance made by a Lender thereunder, an "Incremental Term Loan") in an aggregate principal amount not to exceed, at the time of incurrence (or, in the case of an incurrence to finance a Limited Condition Acquisition, as of the applicable LCA Test Date), the Incremental Amount; provided that any such request for an Incremental Term Facility shall be in a minimum amount of the lesser of (x) $10,000,000 and (y) the entire amount that may be requested under this Section 2.22(b).

(ii) An Incremental Term Facility may be made by an existing Lender (but no existing Lender will have an obligation to provide any Incremental Term Facility) or any other person to whom an assignment of Term Loans would have been permitted pursuant to Section 9.04 (each, a "New Incremental Term Lender"); provided that (x) the Administrative Agent shall have the right to consent (such consent not to be unreasonably conditioned, withheld or delayed) to such person's providing such portion of the Incremental Term Facility if such consent of the Administrative Agent would be required under Section 9.04 for an assignment of Term Loans or Term Loan Commitments to such person and (y) the Borrower shall first offer to the existing Lenders a bona fide opportunity to provide the entire amount of each Incremental Term Facility on terms specified by the Borrower (on a ratable basis among the existing Lenders based on the aggregate principal amount of the Loans held by them at such time) and, if any existing Lender declines to provide its pro rata share of such Incremental Term Facility, the Borrower shall offer such declined portion of such Incremental Term Facility to the existing Lenders that have agreed to provide their pro rata shares of such Incremental Term Facility (on a ratable basis among the applicable existing Lenders based on the aggregate principal amount of the Loans held by them at such time), and, to the extent that any amount of such Incremental Term Facility has not been agreed to be provided by the existing Lenders within three (3) Business Days after such offer, the Borrower may then offer to other persons (which may include the existing Lenders) an opportunity to provide such declined portion of such Incremental Term Facility on such terms (it being understood and agreed that such offer to any Lender may be accepted by one or more Affiliates and/or Approved Funds of such Lender irrespective of whether any such Affiliates or Approved Funds are then Lenders (as determined by the Lender receiving such offer in its sole discretion)).

(iii) If an Incremental Term Facility is added in accordance with this Section 2.22(b), the Borrower, in consultation with the Administrative Agent working in good faith, shall determine the effective date (the "Incremental Term Facility Effective Date") and the final allocation of such Incremental Term Facility among the New Incremental Term Lenders. The Administrative Agent shall promptly notify the applicable New Incremental Term Lenders of the final allocation of the Incremental Term Facility and the Incremental Term Facility Effective Date. In connection with any addition of an Incremental Term Facility pursuant to this Section 2.22(b), the Lenders hereby authorize the Administrative Agent to enter into amendments (which may be executed and delivered solely by the Borrower and the Administrative Agent) to this Agreement and the other Loan Documents with the Borrower as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in order to give effect to such Incremental Term Facility in accordance with its terms as set forth herein.

(iv) Such Incremental Term Facility shall become effective, as of the applicable Incremental Term Facility Effective Date; provided that (i) no Default or Event of Default shall have occurred and be continuing or would result after giving effect to such Incremental Term Facility (or, in the case of an Incremental Term Facility incurred to finance a Limited Condition Acquisition, no Default or Event of Default shall have occurred and be continuing as of the applicable LCA Test Date or would result therefrom and no Default or Event of Default shall have occurred and be continuing under Section 7.01(b), (c), (h) or (i) as of the date the of the consummation of such Limited Condition Acquisition or would result therefrom), (ii) after giving effect to the making of any Incremental Term Loans, the conditions set forth in Section 4.02(b) shall be satisfied (or, in the case of an Incremental Term Facility incurred to finance a Limited Condition Acquisition, the condition set forth in this clause (ii) shall be limited to the Specified Representations and the Specified Acquisition Agreement Representations (and not any other representations or warranties) (conformed as necessary for such acquisition)); (iii) each Incremental Term Facility shall be effected pursuant to one or more joinder agreements and/or amendments (in form and substance reasonably satisfactory to the Administrative Agent) executed and delivered by the Borrower and the New Incremental Term Lenders, and to the extent applicable, the Administrative Agent and each of which shall be recorded in the Register, (iv) to the extent reasonably requested by the New Incremental Term Lenders, the Administrative Agent shall have received board or other applicable resolutions, officers' certificates (including solvency certificates), legal opinions, good standing certificates and/or reaffirmation agreements and/or such amendments to the ABL/Term Intercreditor Agreement and the Security Documents consistent in all material respects with those delivered on the Closing Date under Section 4.01 with respect to the Loan Parties and evidencing the approval of such Incremental Term Facility by the Loan Parties, and (v) all fees and expenses owing in respect of such Incremental Term Facility to the Administrative Agent and the applicable New Incremental Term Lenders shall have been paid.

(v) The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Facilities, as the case may be, shall be as determined by the Borrower and the applicable New Incremental Term Lenders; provided that, except as set forth below, to the extent such terms, provisions and documentation are not consistent with the Initial Term Loans such Incremental Term Facility shall not be materially more favorable (taken as a whole) to the New Incremental Term Lenders than those applicable to Lenders under the Initial Term Loans or shall otherwise be reasonably satisfactory to the Administrative Agent (it being understood that to the extent that any financial maintenance covenant is added for the benefit of any Incremental Term Facility, no consent shall be required from the Administrative Agent or any Lender to the extent that such financial maintenance covenant is also added for the benefit of each existing Tranche of Term Loans) in each case, except for terms, provisions and documentation applicable only to periods after the Latest Maturity Date with respect to any Term Loans in effect on the date of incurrence; provided, further, that:

(A) such Incremental Term Facility and the Loans thereunder shall rank pari passu in right of payment, have the same borrower and Guarantees as, and be secured on an equal and ratable basis (but without regard to the control of remedies) with (by the same Collateral securing), the Initial Term Loans;

(B) the final maturity of any Incremental Term Loans shall be no earlier than the Latest Maturity Date in effect at the time of incurrence;

(C) the Weighted Average Life to Maturity of any Incremental Term Facility shall be no shorter than the then longest remaining Weighted Average Life to Maturity of the Term Loans outstanding at the time of incurrence (without giving effect to any amortization or prepayments on the outstanding Term Loans);

(D) subject to clauses (B) and (C) of this proviso, the amortization schedule applicable to any Incremental Term Facility shall be determined by the Borrower and the New Incremental Term Lenders providing such Incremental Term Facility;

(E) any Incremental Term Loans may participate on a pro rata basis or less than pro rata basis (but not on a greater than pro rata basis (other than prepayment of such Incremental Term Loans with the proceeds of Specified Refinancing Debt or Credit Agreement Refinancing Indebtedness)) in any prepayments of the Initial Term Loans pursuant to Section 2.10 and 2.11 (other than prepayments of the Initial Term Loans with the proceeds of Specified Refinancing Debt or Credit Agreement Refinancing Indebtedness), as specified in the applicable joinder agreement; and

(F) the All-in Yield applicable to the Incremental Term Loans shall be determined by the Borrower and the applicable New Incremental Term Lenders and shall be set forth in each applicable joinder agreement; and

(G) subject to clause (F) above, any fees payable in connection with any such Incremental Term Facility shall be determined by the Borrower and the Lenders providing such Incremental Term Facility.

(vi) The Incremental Term Loans and Incremental Term Commitments made or established pursuant to this Section 2.22(b) shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by Subsidiary Guarantee Agreement the Security Documents. The Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien granted by the Security Documents continue to be perfected under the Uniform Commercial Code or otherwise to the extent required under Section 5.10 and the Security Documents after giving effect to the extension or establishment of any such Loans or any such Commitments.

2.23 Incremental Equivalent Debt.

(a) The Borrower may from time to time, upon notice by the Borrower to the Administrative Agent, issue or incur Indebtedness consisting of one or more series of senior unsecured notes, senior secured first lien or junior lien notes or subordinated notes, in each case issued in a public offering, Rule 144A or other private placement or customary bridge facility in respect of the foregoing, senior secured first lien, junior lien or unsecured loans or junior lien secured or unsecured mezzanine Indebtedness that, in each case, if secured, will be secured solely by the Collateral on a pari passu or junior basis with the Loan Obligations that are issued or made in lieu of an Incremental Term Facility pursuant to an indenture, a note purchase agreement, loan or credit agreement or otherwise (such Indebtedness, collectively, "Incremental Equivalent Debt") in a principal amount not to exceed the Incremental Amount at the time of incurrence (or, in the case of a Limited Condition Acquisition, as of the applicable LCA Test Date).

(b) As a condition precedent to the issuance or incurrence of any Incremental Equivalent Debt pursuant to this Section 2.23, (i) the Borrower shall deliver to the Administrative Agent a certificate dated as of the date of issuance or incurrence of the Incremental Equivalent Debt signed by a Responsible Officer of the Borrower certifying that the conditions precedent set forth in the following clauses (ii) through (ix) have been satisfied and, if applicable, that the Borrower is in pro forma compliance with the Maximum Total Net Leverage Requirement pursuant to clause (x) of the definition of "Incremental Amount" (together with supporting calculations demonstrating compliance with such requirement), (ii) such Incremental Equivalent Debt shall not be borrowed by or subject to any Guarantee by any person other than the Borrower and a Subsidiary Loan Party, respectively, (iii) to the extent such Incremental Equivalent Debt is secured, (x) the security agreements relating to such Incremental Equivalent Debt shall be substantially the same as the Security Documents (with such differences as are reasonably satisfactory to the Administrative Agent), (y) such Incremental Equivalent Debt shall be secured either on an "equal and ratable" basis with the Initial Term Loans (but without regard to the control of remedies) or on a "junior" basis to the Liens that secure the Initial Term Loans, solely on all or some of the Collateral that secures the Initial Term Loans and (z) such Incremental Equivalent Debt shall be subject to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent, (iv) the final maturity of such Incremental Equivalent Debt shall be no earlier than the Latest Maturity Date in effect at the time of the incurrence, issuance or obtainment of such Indebtedness, (v) (A) the terms of such Indebtedness that constitutes notes do not provide for any mandatory prepayment, repurchase, redemption or sinking fund obligations prior to the Latest Maturity Date in effect at the time of the incurrence, issuance or obtainment of such Indebtedness (other than customary prepayments, repurchases or redemptions or offers to prepay, redeem or repurchase or mandatory prepayments upon a change of control, fundamental change, asset sale or casualty or condemnation event, and customary acceleration rights after an event of default) and (B) the terms of such Incremental Equivalent Debt in the form of term loans have a Weighted Average Life to Maturity that is no shorter than the then longest remaining Weighted Average Life to Maturity of the Term Loans outstanding at the time of incurrence (calculated disregarding the effects of any prepayments or amortization), (vi) if such Incremental Equivalent Debt is subordinated in right of payment, the Term Loans shall have been designated as "designated senior indebtedness" or its equivalent in respect of such Indebtedness and the applicable subordination provisions shall be reasonably satisfactory to the Administrative Agent, (vii) [reserved]; (viii) the terms and conditions of such Indebtedness (excluding, for the avoidance of doubt, conversion rights, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums and terms) are, when taken as a whole, not materially more favorable to the lenders or holders providing such Indebtedness than those applicable to the Initial Term Loans when taken as a whole (other than covenants (including financial maintenance covenants) or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence, issuance or obtainment of such Indebtedness) and (ix) no Default or Event of Default shall have occurred and be continuing or would result after giving effect to such Incremental Equivalent Debt (or, in the case of Incremental Equivalent Debt incurred to finance a Limited Condition Acquisition, no Default or Event of Default shall have occurred and be continuing as of the applicable LCA Test Date or would result therefrom and no Default or Event of Default shall have occurred and be continuing under Section 7.01(b), (c), (h) or (i) as of the date the of the consummation of such Limited Condition Acquisition or would result therefrom).

(c) The Lenders hereby authorize the Administrative Agent and the Collateral Agent to enter into amendments (which may be executed and delivered solely by the Borrower and the Administrative Agent and the Collateral Agent) to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to secure any Incremental Equivalent Debt with the Collateral of the Loan Parties and/or to make such technical amendments as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in connection with the issuance or incurrence of such Incremental Equivalent Debt, in each case in accordance with the terms set forth in this Section 2.23.

2.24 Extensions of Term Loans.

(a) The Borrower may at any time and from time to time request that all or a portion of the Term Loans of one or more Tranches existing at the time of such request (each, an "Existing Tranche", and the Term Loans of such Tranche, the "Existing Loans"), be converted to extend the scheduled maturity date(s) of any payment of principal with respect to any such Existing Tranche (any such Existing Tranche which has been so extended, an "Extended Tranche" and the Term Loans of such Extended Tranche, the "Extended Term Loans") and to provide for other terms consistent with this Section 2.24; provided that (i) any such request shall be made by the Borrower to all Lenders with Term Loans of the applicable Tranche with a like maturity date on a pro rata basis (based on the aggregate outstanding principal amount of the applicable Term Loans) and on the same terms to each such Lender and (ii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower in its sole discretion. In order to establish any Extended Tranche, the Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Tranche) (an "Extension Request") setting forth the proposed terms of the Extended Tranche to be established, which terms shall be (x) substantially similar to those applicable to the Existing Tranche from which they are to be extended (the "Specified Existing Tranche") except with respect to the following as determined by the Borrower and set forth in the Extension Request: (i) interest margins and fees, (ii) other covenants or other provisions applicable only to periods after the Latest Maturity Date, (iii) amortization, final maturity date, premium, required prepayment dates and participation in prepayments; provided that, (A) the Weighted Average Life to Maturity of such Extended Tranche shall be no shorter than the remaining Weighted Average Life to Maturity of the Specified Existing Tranche (calculated disregarding the effects of any prepayments or amortization), (B) the final maturity date of such Extended Tranche shall be no earlier than the Maturity Date of the applicable Existing Tranche, (C) any Extended Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis (other than prepayment of such Extended Term Loans with the proceeds of Specified Refinancing Debt or Credit Agreement Refinancing Indebtedness)) in any mandatory prepayments of Term Loans in the same manner as the Specified Existing Tranche under Section 2.10. No Lender shall have any obligation to agree to have any of its Existing Loans converted into an Extended Tranche or Extended Term Loan, as applicable, pursuant to any Extension Request. Any Extended Tranche shall constitute a separate Tranche of Loans from the Specified Existing Tranches and from any other Existing Tranches (together with any other Extended Tranches so established on such date).

(b) The Borrower shall provide the applicable Extension Request at least ten (10) Business Days (or such shorter period as the Administrative Agent may agree in its reasonable discretion) prior to the date on which Lenders under the applicable Existing Tranche or Existing Tranches are requested to respond. Any Lender (an "Extending Lender") wishing to have all or a portion of its Specified Existing Tranche converted into an Extended Tranche shall notify the Administrative Agent (each, an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Specified Existing Tranche that it has elected to convert into an Extended Tranche. In the event that the aggregate amount of the Specified Existing Tranche subject to Extension Elections exceeds the amount of Extended Tranches requested pursuant to the Extension Request, the Specified Existing Tranches subject to Extension Elections shall be converted to Extended Tranches on a pro rata basis based on the amount of Specified Existing Tranches included in each such Extension Election. In connection with any extension of Loans pursuant to this Section 2.24 (each, an "Extension"), the Borrower shall agree to such procedures regarding timing, rounding and other administrative adjustments to ensure reasonable administrative management of the credit facilities hereunder after such Extension, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.24. The Borrower may amend, revoke or replace an Extension Request pursuant to procedures reasonably acceptable to the Administrative Agent at any time prior to the date (the "Extension Request Deadline") on which Lenders under the applicable Existing Tranche or Existing Tranches are requested to respond to the Extension Request. Any Lender may revoke an Extension Election at any time prior to 5:00 p.m. on the date that is two (2) Business Days prior to the applicable Extension Request Deadline, at which point the Extension Request becomes irrevocable (unless otherwise agreed by the Borrower). The revocation of an Extension Election prior to the Extension Request Deadline shall not prejudice any Lender's right to submit a new Extension Election prior to the Extension Request Deadline.

(c) Extended Tranches shall be established pursuant to an amendment (an "Extension Amendment") to this Agreement (which may include amendments to provisions as set forth in Section 2.24(a), and which, in each case, except to the extent expressly contemplated by the last sentence of this Section 2.24(c) and notwithstanding anything to the contrary set forth in Section 9.08, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Tranches established thereby) executed by the Loan Parties, the Administrative Agent, and the Extending Lenders. For the avoidance of doubt, the failure of a Lender to respond to a request for an Extension shall be treated as if such non-responding Lender had affirmatively declined to participate in such Extension. Subject to the requirements of this Section 2.24 and without limiting the generality or applicability of Section 9.08 to any Section 2.24 Additional Amendments, any Extension Amendment may provide for additional terms and/or additional amendments other than those referred to or contemplated above (any such additional amendment, a "Section 2.24 Additional Amendment") to this Agreement and the other Loan Documents; provided that such Section 2.24 Additional Amendments do not become effective prior to the time that such Section 2.24 Additional Amendments have been consented to (including, without limitation, pursuant to consents applicable to holders of any Extended Tranches provided for in any Extension Amendment) by such of the Lenders, Loan Parties and other parties (if any) as may be required in order for such Section 2.24 Additional Amendments to become effective in accordance with Section 9.08; provided, further, that no Extension Amendment may provide for any Extended Tranche to be secured by any Collateral or other assets of any Loan Party that does not also secure the Existing Tranches, have any borrower other than the Borrower or be Guaranteed by any person other than the Guarantors. Notwithstanding anything to the contrary in Section 9.08, any such Extension Amendment may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary, in the reasonable judgment of the Borrower and the Administrative Agent, to effect the provisions of this Section 2.24; provided that the foregoing shall not constitute a consent on behalf of any Lender to the terms of any Section 2.24 Additional Amendment.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Tranche is converted to extend the related scheduled maturity date(s) in accordance with clause (a) above (an "Extension Date"), in the case of the Specified Existing Tranche of each Extending Lender, the aggregate principal amount of such Specified Existing Tranche shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Tranche so converted by such Lender on such date, and such Extended Tranches shall be established as a separate Tranche from the Specified Existing Tranche and from any other Existing Tranches (together with any other Extended Tranches so established on such date).

(e) If, in connection with any proposed Extension Amendment, any Lender declines to consent to the applicable extension on the terms and by the deadline set forth in the applicable Extension Request (each such other Lender, a "Non-Extending Lender") then the Borrower may, on notice to the Administrative Agent and the Non-Extending Lender, replace such Non-Extending Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 9.04 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that the applicable assignee shall have agreed to provide Extended Term Loans on the terms set forth in such Extension Amendment; provided, further, that all obligations of the Borrower (including the fee set forth in Section 2.12(b), if applicable) owing to the Non-Extending Lender relating to the Existing Loans so assigned shall be paid in full by the assignee Lender (or the Borrower) to such Non-Extending Lender concurrently with such Assignment and Acceptance. In connection with any such replacement under this Section 2.24, if the Non-Extending Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance by the later of (A) the date on which the replacement Lender executes and delivers such Assignment and Acceptance and (B) the date as of which all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender, then such Non-Extending Lender shall be deemed to have executed and delivered such Assignment and Acceptance as of such date and the Administrative Agent shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance on behalf of such Non-Extending Lender.

(f) Following any Extension Date, with the written consent of the Borrower, any Non-Extending Lender may elect to have all or a portion of its Existing Loans deemed to be an Extended Term Loan under the applicable Extended Tranche on any date (each date a "Designation Date") prior to the Maturity Date of such Extended Tranche; provided that such Lender shall have provided written notice to the Borrower and the Administrative Agent at least ten (10) Business Days prior to such Designation Date (or such shorter period as the Administrative Agent may agree in its reasonable discretion); provided, further, that no greater amount shall be paid by or on behalf of the Borrower or any of its Affiliates to any such Non-Extending Lender as consideration for its extension into such Extended Tranche than was paid to any Extending Lender as consideration for its Extension into such Extended Tranche. Following a Designation Date, the Existing Loans held by such Lender so elected to be extended will be deemed to be Extended Term Loans of the applicable Extended Tranche, and any Existing Loans held by such Lender not elected to be extended, if any, shall continue to be "Existing Loans" of the applicable Tranche.

(g) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.24, (i) such Extensions shall not constitute optional or mandatory payments or prepayments for purposes of Section 2.11 and (ii) no Extension Request is required to be in any minimum amount or any minimum increment; provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Request in the Borrower's sole discretion and may be waived by the Borrower) of Existing Loans of any or all applicable Tranches be extended. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Section 2.24 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Request) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.10 and 2.11) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.24.

2.25 Specified Refinancing Debt.

(a) The Borrower may, from time to time after the Closing Date, and subject to the written consent of the Administrative Agent (which consent shall not be unreasonably conditioned, delayed or withheld), add one or more new term loan facilities that are provided by any Lender or any Additional Lender ("Specified Refinancing Debt"), to refinance all or any portion of any Tranche of Term Loans then outstanding under this Agreement (which for purposes of this Section 2.25 will be deemed to include any then outstanding Specified Refinancing Debt, Incremental Term Facilities, Extended Term Loans or other Tranches of Loans), in each case pursuant to a Refinancing Amendment; provided that such Specified Refinancing Debt: (i) will rank pari passu or junior in right of payment and of security as the other Loans and Commitments hereunder; (ii) will not be borrowed and will not be Guaranteed by any person that is not the Borrower or a Subsidiary Loan Party, respectively; (iii) will be unsecured or secured by only some or all of the Collateral on a pari passu or junior basis with the Loan Obligations and, if secured, shall be subject to an intercreditor agreement reasonably satisfactory to the Administrative Agent and the Borrower; (iv)(A) will have such pricing and optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed by the Borrower and the applicable Lenders thereof and/or (B) provide for the payment of additional fees and/or premiums to the Lenders providing such Specified Refinancing Debt in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Refinancing Amendment; (v) will have a maturity date that is not prior to the scheduled Maturity Date of, and will have a Weighted Average Life to Maturity that is not shorter than the Weighted Average Life to Maturity of, the Tranche of Term Loans being Refinanced (calculated disregarding the effects of any prepayments or amortization); (vi) subject to clauses (iv) and (v) above, will have terms and conditions (other than pricing, interest rate margins, rate floors, discounts, fees, premiums and optional prepayment or redemption provisions) that are, when taken as a whole, not materially more favorable to the lenders providing such Specified Refinancing Debt than, the terms and conditions of the Loans being refinanced (as reasonably determined by the Borrower in good faith, which determination shall be conclusive) or otherwise reasonably satisfactory to the Administrative Agent (it being understood that to the extent that any financial maintenance covenant is added for the benefit of any Specified Refinancing Debt, no consent shall be required from the Administrative Agent or any Lender to the extent that such financial maintenance covenant is also added for the benefit of any existing Tranche of Term Loans); (vii) the net cash proceeds of such Specified Refinancing Debt shall be applied, substantially concurrently with the incurrence thereof, to the pro rata payment of outstanding Loans of the applicable Tranche being so refinanced, in each case pursuant to Section 2.11; (viii) for purposes of mandatory prepayments, (A) any Specified Refinancing Debt that will rank pari passu in right of payment and of security as the other Loans and Commitments hereunder shall be treated substantially the same as (and in any event no more favorably than) the Tranche of Term Loans being Refinanced (as reasonably determined by the Borrower in good faith, which determination shall be conclusive) and (B) any Specified Refinancing Debt that will rank junior in right of payment and of security as the other Loans and Commitments shall not provide for any mandatory prepayments prior to the prepayment in full of the Term Loans; and (ix) if the Term Loans being refinanced were (A) contractually subordinated to any then existing Tranche of Term Loans in right of payment or security, such Specified Refinancing Debt shall be contractually subordinated to the existing Term Loans in right of payment or security on the same basis or, in the case of security, unsecured and (B) unsecured, such Specified Refinancing Debt shall be unsecured; provided, however, that such Specified Refinancing Debt (x) may provide for any additional or different financial or other covenants or other provisions that are agreed among the Borrower and the Lenders thereof that are (A) applicable only during periods after the Latest Maturity Date in effect at the time of such refinancing or the date on which all non-refinanced Loan Obligations are paid in full or (B) also added for the benefit of any corresponding existing Tranche of Term Loans; and (y) shall not have a principal amount (or accreted value, if applicable) greater than the principal amount (or accreted value, if applicable) of the Loans being refinanced plus accrued interest (including, without duplication, interest paid-in-kind), fees, penalties and premiums (including tender premiums) (if any) thereon payable by the terms of the Indebtedness being refinanced and reasonable fees and expenses (including upfront fees, original issue discount and initial yield payments) associated with such refinancing (it being agreed that, for purposes of assessing whether the foregoing limit on principal amount has been observed, any Indebtedness contemporaneously incurred pursuant to and in accordance with available baskets set forth in Section 6.01 (other than the basket pursuant to which such Specified Refinancing Debt is being incurred) shall be disregarded, even if such Indebtedness is of the same tranche or series of such Specified Refinancing Debt). Any Specified Refinancing Term Loans may participate on a pro rata basis or on a less than pro rata basis (but not on a greater than pro rata basis (other than prepayment of such Specified Refinancing Term Loans with the proceeds of Specified Refinancing Debt or Credit Agreement Refinancing Indebtedness)) in any prepayments of Loans under Section 2.11 in the same manner as the Term Loans being Refinanced as specified in the applicable Refinancing Amendment. It is understood that the Administrative Agent shall have the right to consent (such consent not to be unreasonably withheld, conditioned or delayed) to any Additional Lender providing such Specified Refinancing Debt if such consent would be required under Section 9.04 for an assignment of Loans or Commitments to such person.

(b) The effectiveness of any Refinancing Amendment shall be subject to the satisfaction on the date thereof of each of the conditions set forth in clause (a) above and Section 4.02, and delivery to the Administrative Agent of a certificate of the Borrower dated the date thereof signed by a Responsible Officer of the Borrower, certifying that the conditions precedent set forth in clause (a) above and Section 4.02 have been satisfied and, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of legal opinions, board or other applicable resolutions, officers' certificates (including solvency certificate), good standing certificates and/or reaffirmation agreements, including any supplements or amendments to the Security Documents, the ABL/Term Intercreditor Agreement and any other applicable intercreditor agreement providing for such Specified Refinancing Debt to be secured thereby, consistent in all material respects with those delivered on the Closing Date under Section 4.01. The Lenders hereby authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to establish new Tranches of Specified Refinancing Debt and to make such technical amendments as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new Tranches, in each case on terms consistent with this Section 2.25.

(c) Each Tranche of Specified Refinancing Debt incurred under this Section 2.25 shall be in an aggregate principal amount that is not less than $10,000,000.

(d) The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Specified Refinancing Debt incurred pursuant thereto. Any Refinancing Amendment may, without the consent of any person other than the Borrower, the Administrative Agent and the Lenders providing such Specified Refinancing Debt, effect such amendments to this Agreement and the other Loan Documents as may be necessary, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.25.

ARTICLE III

Representations and Warranties

On the Closing Date, the Borrower represents and warrants to each of the Lenders that:

3.01 Organization; Powers. Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required and (d) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party and, in the case of the Borrower, to borrow and otherwise obtain credit hereunder; except in each case of clauses (a) (other than with respect to the Borrower), (b) (other than with respect to the Borrower) and (c), to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

3.02 Authorization. The execution, delivery and performance by each Loan Party of each of the Loan Documents to which it is a party and, in the case of the Borrower, the borrowings hereunder (a) have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable organizational action required to be obtained by such Loan Party and (b) will not (i) violate (A) any provision of material law, statute, rule or regulation applicable to such Loan Party, (B) the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreements) of such Loan Party, (C) any applicable order of any court or any rule, regulation or order of any Governmental Authority applicable to such Loan Party or (D) any provision of any indenture, agreement or other material instrument to which such Loan Party is a party (including the ABL Documents and the definitive documentation related to any Material Indebtedness), (ii) result in a breach of or constitute (alone or with due notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) under any such indenture, agreement or other material instrument (including the ABL Documents and the definitive documentation related to any Material Indebtedness), or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by such Loan Party, other than the Liens created by the Loan Documents and other Permitted Liens.

3.03 Enforceability. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party party thereto enforceable against such Loan Party, as applicable, in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), (iii) implied covenants of good faith and fair dealing and (iv) any foreign laws, rules and regulations as they relate to pledges of Equity Interests of Foreign Subsidiaries.

3.04 Governmental Approvals; Third Party Consents. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority or any other third party is or will be required for the execution, delivery or performance by each Loan Party of each Loan Document to which such Loan Party is a party, except for (a) the filing of Uniform Commercial Code financing statements, (b) such as have been made or obtained and are in full force and effect, and (c) such actions, consents, approvals, registrations, filings and actions the failure of which to be obtained or made or taken could not reasonably be expected to have a Material Adverse Effect.

3.05 Financial Statements. The financial statements furnished to the Administrative Agent pursuant to Section 4.01(g) fairly present in all material respects the consolidated financial condition of the Borrower and its subsidiaries as of the dates thereof, and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, except as otherwise disclosed to the Administrative Agent prior to the Closing Date.

3.06 No Material Adverse Effect. Since the December 31, 2019, there has been no event or circumstance that, individually or in the aggregate with other events or circumstances, has had or could reasonably be expected to have a Material Adverse Effect.

3.07 Title to Properties; Possession Under Leases. (a) Each Group Member has good and marketable title to, or valid leasehold interests in, all its Real Property in all material respects and good title to, or other valid interests in, all other property material to its business in all material respects, free and clear of all Liens, except for Permitted Liens.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, there are no pending or, to the knowledge of the applicable Group Member, threatened in writing claims regarding condemnation or eminent domain with respect to any Real Property owned by any Group Member. Except as would not reasonably be expected to have a Material Adverse Effect, there is no casualty event that is currently affecting any Real Property owned by any Group Member.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, the property of the Group Members is in good operating order, condition and repair (ordinary wear and tear excepted).

3.08 Subsidiaries. Schedule 3.08 sets forth, in each case as of the Closing Date, the name and jurisdiction of incorporation, formation or organization of each Subsidiary of the Borrower and, as to each such Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any such Subsidiary.

3.09 Litigation; Compliance with Laws. (a) There are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against any Group Member or any business, property or rights of any Group Member that have resulted, or could, individually or in the aggregate, reasonably be expected to result, in a Material Adverse Effect.

(b) No Group Member or their respective properties or assets is in violation of any law, rule or regulation, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, in each case where such violation or default could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.10 Federal Reserve Regulations. Neither the making of any Loan hereunder nor the use of the proceeds thereof will violate the provisions of Regulation T, Regulation U or Regulation X of the Board.

3.11 Investment Company Act. No Loan Party is required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

3.12 Use of Proceeds. The Borrower will use the proceeds of the Term Loans made on the Closing Date for the payment of Transaction Expenses and for other general corporate purposes.

3.13 Taxes. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) (x) the Borrower and each of the Subsidiaries have filed or caused to be filed all federal, state, local and non-U.S. Tax returns and reports required to have been filed by it (including in its capacity as withholding agent) and (y) each such Tax return or report is true and correct; and (ii) the Borrower and each of the Subsidiaries have timely paid or caused to be timely paid all Taxes that are due and payable, except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which the Borrower or any of the Subsidiaries (as the case may be) has set aside on its books adequate reserves in accordance with GAAP (to the extent required thereby).

3.14 No Material Misstatements. (a) All written information (other than the Projections, forward looking information, third party reports, summaries, presentations and information of a general economic nature or general industry nature) (the "Information") concerning the Borrower, the Subsidiaries, the Transactions and any other transactions contemplated hereby included in the Information Memorandum or otherwise prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, did not contain any untrue statement of a material fact as of the Closing Date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made (giving effect to all supplements and updates provided thereto).

(b) The Projections prepared by or on behalf of the Borrower or any of its representatives that have been made available to any Lenders or the Administrative Agent in connection with the Transactions have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable as of the date such Projections were furnished to Lenders (it being understood that such Projections are as to future events and are not to be viewed as facts, such Projections are subject to significant uncertainties and contingencies and that actual results during the period or periods covered by any such Projections may differ materially from the projected results, and that no assurance can be given that the projected results will be realized).

3.15 Employee Benefit Plans. Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no Reportable Event has occurred during the past five years as to which the Borrower or any ERISA Affiliate was required to file a report with the PBGC; (ii) no ERISA Event has occurred or is reasonably expected to occur; and (iii) none of the Borrower or any of its ERISA Affiliates has received any written notification that any Multiemployer Plan has been terminated within the meaning of Title IV of ERISA.

3.16 Environmental Matters. Except as to matters that could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(a) each Group Member, and the operations and properties of each Group Member, are in compliance with applicable Environmental Laws, including obtaining, maintaining and complying with all Environmental Permits required for their current or intended operations or for any property owned, leased, or otherwise operated the Group Members and each Group Member reasonably believes that compliance with any Environmental Law that is or is expected to become applicable to any of them will be timely attained and maintained, without material expense;

(b) no Hazardous Material has been released or otherwise come to be located at, in, on, under or about any property currently owned, operated or leased by any Group Member, or, to knowledge of the Borrower, any property formerly owned, operated or leased by any Group Member, that could reasonably be expected to (i) require investigation, removal, or remediation under Environmental Law or otherwise give rise to Environmental Liability of any Group Member, or (ii) interfere with any Group Member's continued operations;

(c) there are no pending or, to the knowledge of the Borrower, threatened in writing judicial, administrative or other actions, suits or proceedings arising under or relating to any Environmental Laws, in each case relating to any Group Member or their respective business, properties or operations;

(d) no Group Member has been notified that it is a potentially responsible party under or relating to any Environmental Law (including, but not limited to, the federal Comprehensive Environmental Response, Compensation, and Liability Act) or with respect to any Release of Hazardous Materials;

(e) no Group Member has entered into or agreed to any consent decree, order, or settlement or other agreement, or is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum for dispute resolution, in each case relating to compliance with Environmental Law or any Environmental Liability; and

(f) no Group Member has assumed, undertaken or retained, by contract or operation of law, any Environmental Liabilities or obligations under Environmental Law.

3.17 Security Documents. The Security Agreement and each other Security Document is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties), in each case, a legal, valid and enforceable security interest in the Collateral described therein. As of the Closing Date, when certificates or promissory notes (if any), representing the Collateral and required to be delivered under the applicable Security Document are delivered to the Collateral Agent, when proper financing statements are filed, when proper notices are filed with the U.S. Patent and Trademark Office and the U.S. Copyright Office, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in such Collateral as security for the Loan Obligations to the extent perfection can be obtained by such delivery or by filing Uniform Commercial Code financing statements or such notices with the U.S. Patent and Trademark Office and the U.S. Copyright Office, in each case prior and superior in right to the Lien of any other person (except Permitted Liens entitled to priority in accordance with Requirements of Law or contract and, for the avoidance of doubt, subject to the ABL/Term Intercreditor Agreement).

3.18 Location of Real Property. Schedule 3.18 lists accurately and completely, in each case as of the Closing Date, all Real Property owned and leased by the Borrower and the Subsidiary Loan Parties and the addresses thereof.

3.19 Solvency. The Group Members, on a consolidated basis, immediately after the consummation of the Transactions to occur on the Closing Date, are Solvent.

3.20 Labor Matters. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or threatened in writing against the Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable law dealing with such matters; and (c) all payments due from the Borrower or any of the Subsidiaries or for which any claim may be made against the Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Borrower or any of the Subsidiaries is a party or by which the Borrower or any of the Subsidiaries is bound.

3.21 Insurance. Each Loan Party is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which it is engaged.

3.22 No Default. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

3.23 Intellectual Property; Licenses, Etc. Except as could not reasonably be expected to have a Material Adverse Effect: (a) the Borrower and each of its Subsidiaries owns, or possesses the right to use, all Intellectual Property used or held for use in or otherwise reasonably necessary for the present conduct of their respective businesses, (b) the Borrower and its Subsidiaries are not interfering with, infringing upon, misappropriating or otherwise violating Intellectual Property of any person, and (c) no claim or litigation regarding any of the Intellectual Property owned by the Borrower and its Subsidiaries is pending or threatened in writing.

3.24 [Reserved].

3.25 USA PATRIOT Act; OFAC; Sanctions.

(a) Each Loan Party is in compliance in all material respects with the USA PATRIOT Act and other applicable anti-terrorism laws, and, at least three Business Days prior to the Closing Date, the Borrower has provided to the Administrative Agent all information related to the Loan Parties (including names, addresses and tax identification numbers (if applicable)) reasonably requested in writing by the Administrative Agent not less than ten (10) Business Days prior to the Closing Date and mutually agreed to be required under "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to be obtained by the Administrative Agent or any Lender.

(b) (i) the Borrower and its Subsidiaries are in compliance in all material respects with applicable Sanctions; and (ii) neither the Borrower nor any of its Subsidiaries nor any director, officer or employee of any of the foregoing is a Sanctioned Person.

(c) The Borrower will not directly or indirectly use the proceeds of the Loans or otherwise make available such proceeds to any person for the purpose of financing the activities of any person that is currently the target of any Sanctions or for the purpose of funding, financing or facilitating any activities, business or transaction with or in any country that is the target of the Sanctions, to the extent such activities, businesses or transaction would be prohibited by Sanctions, or in any manner that would result in the violation of any Sanctions applicable to any party hereto.

3.26 Foreign Corrupt Practices Act. The Borrower and its Subsidiaries, their respective directors and officers and (to the knowledge of the Borrower or any of its Subsidiaries) their respective agents and employees, are in compliance with the U.S. Foreign Corrupt Practices Act of 1977, as amended, or similar law of a jurisdiction in which the Borrower or any of its Subsidiaries conduct their business and to which they are lawfully subject ("Anti-Corruption Laws").

ARTICLE IV

Conditions of Lending

The obligations of the Lenders to make Loans hereunder on the Closing Date are subject to the satisfaction (or waiver in accordance with Section 9.08) of the following conditions:

4.01 Closing Date Borrowing. On or prior to the Closing Date:

(a) The Administrative Agent (or its counsel) shall have received from each of the Borrower, the Collateral Agent and the Lenders (i) a counterpart of this Agreement and the other Loan Documents to which such persons are a party signed on behalf of such party or (ii) written evidence reasonably satisfactory to the Administrative Agent (which may include delivery of a signed signature page of this Agreement by electronic transmission (e.g., "pdf")) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received, on behalf of itself, the Collateral Agent and the Lenders, (i) a written opinion of Ropes & Gray LLP, counsel to the Loan Parties and (ii) a written opinion of Venable LLP, Maryland counsel to the Borrower, in each case, (A) dated the Closing Date, (B) addressed to the Administrative Agent, the Collateral Agent and the Lenders on the Closing Date and (C) in form and substance reasonably satisfactory to the Administrative Agent covering such matters relating to the Loan Documents as the Administrative Agent shall reasonably request.

(c) The Administrative Agent shall have received a certificate of the Secretary or Assistant Secretary or similar officer of each Loan Party dated the Closing Date and certifying:

(i) that attached thereto is a copy of the certificate or articles of incorporation, certificate of limited partnership, certificate of formation or other equivalent constituent and governing documents, including all amendments thereto, of such Loan Party, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization,

(ii) that attached thereto is a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of such Loan Party as of a recent date from the Secretary of State (or other similar official) of the jurisdiction of its organization,

(iii) that attached thereto is a true and complete copy of the by-laws (or partnership agreement, limited liability company agreement or other equivalent constituent and governing documents) of such Loan Party as in effect on the Closing Date,

(iv) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of the Loan Documents dated as of the Closing Date to which such Loan Party is a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect on the Closing Date,

(v) as to the incumbency and specimen signature of each officer of such Loan Party executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party, and

(vi) as to the absence of any pending proceeding for the dissolution or liquidation of such Loan Party or, to the knowledge of such person, threatening the existence of such Loan Party.

(d) The Administrative Agent shall have received (i) the results of Uniform Commercial Code and other customary Lien searches with respect to each Loan Party and (ii) insurance certificates and applicable endorsements listing the Collateral Agent as additional insured and loss payee, as applicable.

(e) Each Arranger shall have completed, and be satisfied in all respects with the results of its business, legal, accounting, real estate and environmental due diligence of, among other things, the Borrower, the Guarantors and their respective subsidiaries.

(f) [Reserved].

(g) The Administrative Agent shall have received (i) the audited consolidated balance sheets and the related statements of operations and comprehensive income (loss), cash flows and stockholders' equity of the Borrower and its consolidated Subsidiaries for the fiscal years ended December 31, 2017, December 31, 2018 and December 31, 2019 and (ii) the unaudited consolidated balance sheets and the related statements of operations and comprehensive income (loss), cash flows and stockholders' equity of the Borrower and its consolidated Subsidiaries for the fiscal quarters ended March 31, 2020, June 30, 2020 and September 30, 2020.

(h) The Administrative Agent shall have received a solvency certificate substantially in the form of Exhibit C and signed by a Financial Officer of the Borrower confirming the solvency of the Group Members on a consolidated basis after giving effect to the Transactions on the Closing Date.

(i) The Agents and Citigroup Global Markets Inc. shall have received all fees payable thereto or to any Lender on or prior to the Closing Date and, to the extent invoiced at least three Business Days prior to the Closing Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including reasonable and documented fees, charges and disbursements of White & Case LLP) required to be reimbursed or paid by the Loan Parties hereunder or under any Loan Document on or prior to the Closing Date (which amounts may be offset against the proceeds of the Loans).

(j) The Collateral and Guarantee Requirement shall be satisfied as of the Closing Date (in the sole discretion of the Administrative Agent).

(k) The Administrative Agent shall have received all documentation and other information required by Section 3.25(a) in accordance with the time-periods set forth therein.

(l) Since December 31, 2019, no event, change or development shall have occurred that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

(m) The Borrower shall have delivered to the Administrative Agent an officer's certificate dated as of the Closing Date, certifying as to the satisfaction of the conditions set forth in Sections 4.01(j), 4.01(l), 4.02(b) and 4.02(c).

(n) The Administrative Agent (or its counsel) shall have received (i) a fully executed and effective copy of an amendment to the ABL Credit Agreement, in form and substance reasonably satisfactory to the Administrative Agent and (ii) from each of the Borrower, the Subsidiary Loan Parties, the Collateral Agent and the ABL Agent a counterpart of the ABL/Term Intercreditor Agreement signed on behalf of such party.

(o) So long as requested by the Administrative Agent, the Collateral Agent or any Lender in writing at least five days in advance of the Closing Date, the Administrative Agent and the Collateral Agent shall have received, at least three Business Days prior to the Closing Date, all documentation and other information that is required (as determined by the Administrative Agent, the Collateral Agent or such Lender) by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act.

(p) The Borrower shall have paid to each Lender an initial yield payment equal to 2.00% of its Term Loan Commitment with respect to the Initial Term Loans on the Closing Date (as in effect immediately before giving effect to the termination thereof pursuant to Section 2.08), with such payment to be earned by, and payable to, each such Lender on the Closing Date.

For purposes of determining compliance with the conditions specified in this Section 4.01, each Lender 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 the Lenders unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Closing Date specifying its objection thereto and, in the case of a Borrowing, such Lender shall not have made available to the Administrative Agent such Lender's ratable portion of the initial Borrowing.

4.02 All Borrowings. With respect to any Borrowing on or after the Closing Date:

(a) The Administrative Agent shall have received a duly completed Borrowing Request as required by Section 2.03.

(b) The representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects as of such date, in each case, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date); provided that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(c) No Default or Event of Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds therefrom.

Notwithstanding the foregoing, if the proceeds of any Borrowing, including any Term Facility Increase or Incremental Term Loans are being used to finance a Limited Condition Acquisition, (x) the condition described in Section 4.02(b) shall be limited to the accuracy of the representations and warranties that would constitute Specified Representations and Specified Acquisition Agreement Representations (and not any other representations or warranties) (conformed as necessary for such acquisition) and (y) the condition set forth in Section 4.02(c) (other than with respect to such Defaults or Events of Default under Section 7.01(b), (c), (h) or (i)) shall be tested as of the applicable LCA Test Date.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with each Lender that, it will, and will cause each of its Subsidiaries to:

5.01 Existence; Business and Properties. (a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, in each case (other than in the case of the preservation of the existence of any Loan Party) to the extent that the failure to do so would reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any transaction permitted by Section 6.04.

(b) Except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property, licenses, leases and rights with respect thereto necessary to the normal conduct of its business, and (ii) at all times maintain, protect and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear and casualty excepted), from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times (in each case except as permitted by this Agreement).

5.02 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, insurance with respect to the Loan Parties' properties' in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in Similar Businesses and owning similar properties in localities where the Loan Parties operate.

5.03 Taxes. Pay its obligations in respect of all Tax liabilities, assessments and governmental charges, before the same shall become delinquent or in default, except where the (i) failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or (ii) amount or validity thereof is being contested in good faith by appropriate proceedings and the Borrower or a Subsidiary thereof has set aside on its books adequate reserves therefor in accordance with GAAP (to the extent required thereby).

5.04 Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(a) within 90 days after the end of each fiscal year (commencing with the fiscal year ending December 31, 2020), a consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year, and the related statements of operations and comprehensive income (loss), cash flows and stockholders' equity for such fiscal year, and setting forth (commencing with financial statements relating to the fiscal year ending December 31, 2021) in comparative form the corresponding figures for the prior fiscal year and audited by independent public accountants of recognized national standing (or otherwise reasonably acceptable to the Administrative Agent) and accompanied by an opinion of such accountants (which opinion shall not be qualified as to scope of audit or as to the status of any Group Member as a going concern, other than with respect to, or resulting from, (i) an upcoming maturity under any Indebtedness occurring within one year from the time such opinion is delivered or (ii) any breach or anticipated breach of any financial covenant) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP (it being understood that the delivery by the Borrower of annual reports on Form 10-K (or any successor or comparable form) of the Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(a) to the extent such annual reports include the information specified herein), together with a customary "management discussion and analysis" of financial information;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year (commencing with the fiscal quarter ending March 31, 2021), (i) a consolidated balance sheet of the Borrower and its consolidated Subsidiaries as at the end of such quarterly period, (ii) the related statements of operations and comprehensive income (loss) for such quarterly period and the then elapsed portion of the fiscal year and (iii) the related statements of cash flows for the then elapsed portion of the fiscal year, and setting forth (commencing with financial statements relating to the fiscal quarter ending March 31, 2022) in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, all of which shall be in reasonable detail, which consolidated balance sheet and related statements of operations and comprehensive income (loss) and cash flows shall be certified by a Financial Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) (it being understood that the delivery by the Borrower of quarterly reports on Form 10-Q (or any successor or comparable form) of the Borrower and its consolidated Subsidiaries shall satisfy the requirements of this Section 5.04(b) to the extent such quarterly reports include the information specified herein), together with a customary "management discussion and analysis" of financial information;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower certifying that no Event of Default or Default exists as of such date or, if such an Event of Default or Default exists as of such date, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(d) promptly after the same become publicly available, copies of all periodic and other publicly available reports and proxy statements and, to the extent requested by the Administrative Agent, other publicly available materials filed by any Group Member with the SEC; provided, however, that such reports, proxy statements, filings and other materials required to be delivered pursuant to this clause (d) shall be deemed delivered for purposes of this Agreement when posted to the website of the Borrower or the website of the SEC;

(e) promptly, from time to time, such other information (i) regarding the operations, business affairs and financial condition of the Borrower or any of the Subsidiaries, or compliance with the terms of any Loan Document as in each case the Administrative Agent may reasonably request (for itself or on behalf of any Lender) or (ii) reasonably requested by the Administrative Agent or any Lender through the Administrative Agent for purposes of compliance with applicable "know your customer" and Anti-Money Laundering Laws;

(f) if reasonably requested by the Administrative Agent, no later than 10 Business Days after the delivery of the financial statements required pursuant to clause (a) or (b) of this Section 5.04, the Borrower shall hold a customary conference call for Lenders; provided that such conference call may be combined (at the option of the Borrower) with the Borrower's regularly scheduled quarterly shareholder call;

(g) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Borrower or any of its Subsidiaries, or compliance with the terms of the Loan Documents, as the Administrative Agent or the Arrangers through the Administrative Agent may from time to time reasonably request; and

(h) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 5.04(a) and (b) above, reconciliations for such consolidated financial statements or other consolidating information reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

The Borrower hereby acknowledges and agrees that all financial statements furnished pursuant to clauses (a), (b) and (d) above are hereby deemed to be Borrower Materials suitable for distribution, and to be made available, to Public Lenders as contemplated by Section 9.17 and may be treated by the Administrative Agent and the Lenders as if the same had been marked "PUBLIC" in accordance with such paragraph (unless the Borrower otherwise notifies the Administrative Agent in writing on or prior to delivery thereof).

Anything to the contrary notwithstanding, nothing in this Agreement will require any Group Member 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 Requirements of Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

Documents required to be delivered pursuant to clauses (a), (b) and (d) above may be delivered electronically and if so delivered, shall be deemed to have been delivered on the earliest date on which (i) the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet, (ii) such documents are posted on the Borrower's behalf on IntraLinks/IntraAgency or another 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), or (iii) such financial statements and/or other documents are posted to the website of the Borrower or the website of the SEC; *provided*, that, (A) the Borrower shall, at the request of the Administrative Agent, continue to deliver copies (which delivery may be by electronic transmission) of such documents to the Administrative Agent and (B) the Borrower shall notify (which notification may be by facsimile or electronic transmission) the Administrative Agent of the posting of any such documents on any website described in this paragraph. 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.

5.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against the Borrower or any of the Subsidiaries which could reasonably be expected to have a Material Adverse Effect;

(c) any other development specific to the Borrower or any of the Subsidiaries that is not a matter of general public knowledge and that has had, or could reasonably be expected to have, a Material Adverse Effect; and

(d) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, could reasonably be expected to have a Material Adverse Effect.

5.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; provided that this Section 5.06 shall not apply to laws related to Taxes, which are the subject of Section 5.03. The Borrower will maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with applicable anti-terrorism laws, applicable anti-bribery laws, applicable anti-money laundering laws (including the USA PATRIOT Act), applicable Anti-Corruption Laws and applicable Sanctions in connection with the Borrower's or its Subsidiaries' business operations.

5.07 Maintaining Records; Access to Properties and Inspections. Maintain all financial records in accordance with GAAP and permit any persons designated by the Administrative Agent to visit and inspect the financial records and the properties of each Group Member at reasonable times, upon reasonable prior notice to such Group Member, and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any persons designated by the Administrative Agent upon reasonable prior notice to the applicable Group Member to discuss the affairs, finances and condition of such Group Member with the officers thereof and independent accountants therefor (so long as the Borrower has the opportunity to participate in any such discussions with such accountants); provided that the Administrative Agent shall not exercise such rights more often than one time during any calendar year absent the existence of an Event of Default; provided, further, that none of the Group Members shall be required 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 Requirements of Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

5.08 Use of Proceeds. Use the proceeds of the Loans made hereunder on the Closing Date in the manner contemplated by Section 3.12.

5.09 Compliance with Environmental Laws. (i) Comply with all Environmental Laws and Environmental Permits applicable to its operations and properties; (ii) and obtain and renew all Environmental Permits; (iii) conduct any investigation, study, sampling and testing, and undertake any cleanup, response or other corrective action necessary to address any Releases of Hazardous Materials at, in, on, under or emanating from any property owned, leased or operated by any Group Member in accordance with the requirements of all Environmental Laws; and (iv) make an appropriate response to any investigation, notice, demand, claim, suit or other proceeding asserting Environmental Liability against any Group Member and discharge any obligations it may have to any person thereunder, except, in the case of each of clauses (i) through (iv), to the extent the failure to do so could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, provided that no Group Member shall be required to undertake any such cleanup, removal, remedial or other responsive action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP (to the extent required thereby).

5.10 Further Assurances; Additional Security. Subject to any applicable intercreditor agreement:

(a) If any Subsidiary of the Borrower that is not an Excluded Subsidiary is formed or acquired by any Loan Party after the Closing Date (including, without limitation, pursuant to an LLC Division or LP Division or the creation of a new Series LLC or Series LP) (provided that each of (i) any Subsidiary Redesignation resulting in an Unrestricted Subsidiary becoming a Subsidiary Loan Party and (ii) any Excluded Subsidiary ceasing to be an Excluded Subsidiary but remaining a Subsidiary, shall be deemed to constitute the acquisition of a Subsidiary for all purposes of this Section 5.10), within 10 Business Days after the date such Subsidiary is formed or acquired (or such longer period as the Administrative Agent may agree in its reasonable discretion), notify the Collateral Agent in writing thereof and, within 30 Business Days after the date such Subsidiary is formed or acquired or such longer period as the Administrative Agent may agree in its reasonable discretion, cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary and with respect to any Equity Interest in such Subsidiary owned by any Loan Party.

(b) Furnish to the Collateral Agent prompt written notice of (and in any event within 30 days after) any change (A) in any Loan Party's legal name, (B) in any Loan Party's type of organization, (C) in any Loan Party's jurisdiction of organization or (D) in the location of the chief executive office of any Loan Party that is not a registered organization; provided that the Borrower shall not effect or permit any such change unless all filings have been made by the Borrower, or will have been made by the Borrower under the Uniform Commercial Code within 30 days following such change (or such longer period as the Administrative Agent may agree in its reasonable discretion) that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral of such Loan Party in which a security interest may be perfected by such filing, for the benefit of the Secured Parties.

5.11 Know Your Customer Requirements. Promptly following any request therefor, provide information and documentation reasonably requested by the Administrative Agent, the Collateral Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the USA PATRIOT Act.

5.12 [Reserved].

5.13 Post-Closing Actions. The Loan Parties will take each of the actions set forth on Schedule 5.13 within the time period prescribed therefor on such schedule (as each such time period may be extended by the Administrative Agent in its reasonable discretion). All conditions precedent, covenants and representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.13 within the time periods required by this Section 5.13, rather than as elsewhere provided in the Loan Documents).

ARTICLE VI

Negative Covenants

The Borrower covenants and agrees with each Lender that, it will not, and will not permit any of the Subsidiaries to:

6.01 Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness created hereunder and under the other Loan Documents;

(b) Indebtedness incurred under the ABL Documents in an aggregate principal amount not to exceed the ABL Cap (as defined in the ABL/Term Intercreditor Agreement), and any Permitted Refinancing in respect thereof;

(c) Incremental Equivalent Debt, Permitted Ratio Debt, and any Permitted Refinancing in respect thereof;

(d) Indebtedness of the Borrower or any of its Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments created or issued in the ordinary course of business in connection with workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims;

(e) the incurrence of Indebtedness of the Borrower to a Subsidiary or of Indebtedness of a Subsidiary to the Borrower or another Subsidiary to the extent permitted by Section 6.03; *provided* that any such Indebtedness for borrowed money incurred by a Loan Party and owing to a Subsidiary that is not a Loan Party is expressly subordinated in right of payment to the Loan Obligations; *provided, further* that any subsequent issuance or transfer of any Equity Interests or any other event which results in any such Subsidiary ceasing to be a Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Subsidiary or any pledge of such Indebtedness constituting a lien permitted by Section 6.02) 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 (e);

(f) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar obligations or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case provided in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations in the ordinary course of business or consistent with industry practice;

(g) Indebtedness of the Borrower or any Subsidiary, in an aggregate principal amount outstanding that, immediately after giving effect to the incurrence of such Indebtedness and the use of proceeds thereof, together with the aggregate principal amount of any other Indebtedness outstanding pursuant to this Section 6.01(g) at such time, would not exceed the greater of $25,000,000 and 25% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period;

(h) Guarantees by the Borrower or any Subsidiary of any Indebtedness of the Borrower or any Subsidiary permitted to be incurred under this Agreement;

(i) Indebtedness representing deferred compensation to employees, consultants or independent contractors of the Borrower (or, to the extent such work is done for the Borrower or its Subsidiaries, any direct or indirect parent thereof) or any Subsidiary incurred in the ordinary course of business or consistent with industry practice;

(j) (i) ABL Bank Product Obligations and ABL Hedge Obligations (each as defined in the ABL/Term Intercreditor Agreement) and (ii) the incurrence of 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 and its Subsidiaries (including short-term pooling and similar intercompany arrangements);

(k) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business or consistent with industry practice;

(l) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in each case incurred in the ordinary course of business or other cash management services incurred in the ordinary course of business or consistent with industry practice;

(m) Indebtedness supported by a letter of credit issued under any revolving credit or letter of credit facility permitted by Section 6.01, in a principal amount not in excess of the stated amount of such letter of credit;

(n) Indebtedness in respect of Hedging Agreements (other than any Hedging Agreement entered into for speculative purposes) and Hedging Agreements (as defined in the ABL Credit Agreement);

(o) Indebtedness of the Borrower or any Subsidiary with respect to (i) Capitalized Lease Obligations and purchase money indebtedness in an aggregate amount at any time outstanding not to exceed the greater of $25,000,000 and 25% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period, in each case determined at the time of incurrence; provided that (A) such Indebtedness is issued and any Liens securing such Indebtedness are created within 180 days after the acquisition, construction, lease or improvement of the asset financed and (B) any such Indebtedness is secured only by the asset, equipment or property acquired, constructed, leased or improved (or assets affixed or appurtenant thereto and additions and accessions) in connection with the incurrence of such Indebtedness, related property, replacements of such property, equipment or assets, and additions and accessions and, in the case of multiple financings of equipment provided by any lender, other equipment financed by such lender, and in each case, proceeds and products thereof and (ii) any Permitted Refinancing thereof;

(p) so long as no Event of Default shall have occurred and be continuing or would result therefrom, Indebtedness assumed (but not incurred) by the Borrower or any Subsidiary in connection with a Permitted Acquisition; provided that (i) such Indebtedness was not created in anticipation or contemplation of such Permitted Acquisition and (ii) the Total Net Leverage Ratio as of the end of the Test Period then most recently ended (calculated on a pro forma basis after giving effect to such assumption) does exceed the greater of (A) 5.00 to 1.0 and (B) the Total Net Leverage Ratio as of immediately prior to the assumption of such Indebtedness;

(q) Permitted Pari Passu Secured Refinancing Debt and Permitted Junior Refinancing Debt, and any Permitted Refinancing thereof;

(r) the Unsecured Bonds and any Permitted Refinancing thereof;

(s) Indebtedness constituting indemnification obligations or obligations in respect of purchase price or other similar adjustments (including earnout or similar obligations) incurred in connection with any Permitted Acquisition or any Disposition permitted under this Agreement;

(t) Indebtedness of the Borrower and any Subsidiary in existence as of the Closing Date and any Permitted Refinancing thereof; *provided* that any such item of Indebtedness with an aggregate outstanding principal amount on the Closing Date in excess of $1,000,000 shall be set forth on Schedule 6.01;

(u) Indebtedness incurred by the Borrower or a 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;

(v) the incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to any acquisition (by merger, consolidation or amalgamation or otherwise); and

(w) Indebtedness (i) incurred under the TA West Greenwich Loan Documents and any Permitted Refinancing in respect thereof, in any case in an aggregate outstanding principal amount not to exceed the greater of $17,500,000 and 17.5% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period at any time and (ii) any Permitted Refinancing in respect thereof.

Accrual of interest or dividends or the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness will be deemed not to be an incurrence or issuance of Indebtedness for purposes of this Section 6.01 and will be deemed not to constitute outstanding Indebtedness for purposes of determining basket usage in respect of this Section 6.01.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred (or at Borrower's election, at the time of "pricing" and allocation of commitments in respect thereof) in the case of term debt, or first committed (or at Borrower's election, at the time of "pricing" and allocation of commitments in respect thereof) in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in another 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 shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (i) the principal amount of such Indebtedness being refinanced (*plus* unused commitments thereunder), *plus* (ii) an amount equal to unpaid accrued interest, fees and premium (including tender premium) and penalties (if any) thereon plus upfront fees and original issue discount and other reasonable and customary fees and expenses incurred or paid in connection with such refinancing.

The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

6.02 Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person) of the Borrower or any Subsidiary at the time owned by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, "Permitted Liens"):

(a) Liens securing the ABL Obligations, and any Permitted Refinancing in respect thereof, to the extent such Indebtedness is incurred and outstanding pursuant to, and in compliance with, Section 6.01(b), and such Liens on Collateral are subject to the terms of the ABL/Term Intercreditor Agreement;

(b) any Lien created under the Loan Documents;

(c) Liens securing Incremental Equivalent Debt and Permitted Ratio Debt (to the extent that such Indebtedness is otherwise permitted to be secured), and any Permitted Refinancing in respect thereof;

(d) Liens securing Indebtedness assumed pursuant to Section 6.01(p);

(e) Liens for Taxes, assessments or other governmental charges or levies not yet due and payable or that are being contested in compliance with Section 5.03;

(f) Liens imposed by law, such as landlord's (including for this purpose landlord's Liens created pursuant to the applicable lease), carriers', warehousemen's, mechanics', materialmen's, repairmen's, supplier's, construction or other like Liens, securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or any Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(g) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any of its Subsidiaries;

(h) deposits and other Liens to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capitalized Lease Obligations), statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(i) (x) with respect to Real Property, zoning restrictions, easements, leases (other than Capitalized Lease Obligations), licenses, special assessments, rights-of-way, covenants, conditions, servitudes, declarations, homeowners' associations and similar agreements and other restrictions (including minor defects and irregularities in title and similar encumbrances) on or with respect to the use of Real Property, that, individually or in the aggregate, do not interfere in any material respect with the use, occupancy or ordinary conduct of the business of the Borrower or any Subsidiary and (y) leases permitted under Section 6.04;

(j) Liens securing judgments that do not constitute an Event of Default under Section 7.01(j);

(k) Liens that are contractual rights of set-off (and related pledges) (i) relating to the establishment of depository relations with banks and other financial institutions not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposits, sweep accounts, reserve accounts or similar accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary, including with respect to credit card charge-backs and similar obligations, or (iii) relating to purchase orders and other agreements entered into with customers, suppliers or service providers of the Borrower or any Subsidiary in the ordinary course of business;

(l) Liens (i) arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, (iii) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes and (iv) in favor of credit card companies pursuant to agreements therewith;

(m) Liens securing obligations in respect of trade-related letters of credit, bankers' acceptances or similar obligations and completion guarantees permitted under Section 6.01 and covering the property (or the documents of title in respect of such property) financed by such letters of credit, bankers' acceptances or similar obligations and completion guarantees and the proceeds and products thereof;

(n) 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;

(o) Liens solely on any cash earnest money deposits made by the Borrower or any of the Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted hereunder;

(p) Liens arising out of conditional sale, title retention or similar arrangements for the sale or purchase of goods by the Borrower or any of the Subsidiaries in the ordinary course of business or consistent with industry practice;

(q) usual and customary leases, licenses, subleases or sublicenses granted to others in the ordinary course of business or consistent with industry practice and that do not interfere in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole;

(r) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(s) Liens securing Indebtedness incurred pursuant to Section 6.01(o);

(t) Liens securing Indebtedness incurred pursuant to Section 6.01(q);

(u) Liens with respect to property or assets of the Borrower or any Subsidiary securing obligations in an aggregate outstanding principal amount outstanding that, immediately after giving effect to the incurrence of such Liens, would not exceed the greater of $25,000,000 and 25% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period;

(v) Liens securing Indebtedness incurred pursuant to Section 6.01(j);

(w) Liens securing Indebtedness incurred pursuant to Section 6.01(n);

(x) Liens securing Indebtedness incurred pursuant to Section 6.01(w) (but no such Liens shall be on Collateral);

(y) Liens arising from (i) any Lease Agreement (or sublease with respect thereto) or any true operating lease entered into in the ordinary course of business and the precautionary Uniform Commercial Code financing statement filings in respect thereof, and (ii) equipment or other materials which are not owned by any Group Member located on the premises of such Group Member (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of such Group Member and the precautionary Uniform Commercial Code financing statement filings in respect thereof;

(z) leases or subleases of Real Property granted by any Group Member in the ordinary course of business or consistent with industry practice (i) to its franchisees and (ii) to any person so long as any such leases or subleases pursuant to this clause (ii) do not interfere in any material respect with the use of such Real Property or the ordinary conduct of the business of such Group Member as presently conducted thereon or materially impair the value of such Real Property;

(aa) Liens securing obligations in respect of Indebtedness or other obligations of (x) the Borrower owing to a Loan Party or (y) a Subsidiary that is (A) a Loan Party owing to another Loan Party or (B) not a Loan Party owing to the Borrower or another Subsidiary, in each case permitted to be incurred in accordance with Section 6.01;

(bb) Liens existing, or provided for under binding contracts existing, on the Closing Date (*provided* that any such Lien securing obligations in an aggregate amount on the Closing Date in excess of $1,000,000 shall be set forth on Schedule 6.02) and Permitted Refinancings thereof;

(cc) 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;

(dd) 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 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;

(ee) Liens in favor of the Borrower or any Guarantor;

(ff) 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 and (b) 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;

(gg) 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;

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

(ii) Liens 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 6.04;

(jj) Liens on Cash Equivalents used to satisfy or discharge Indebtedness; *provided* that such satisfaction or discharge is permitted under this Agreement;

(kk) Liens on Equity Interests or other securities of an Unrestricted Subsidiary;

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

(mm) 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;

(nn) Liens on the assets of Subsidiaries that are not Loan Parties securing Indebtedness or other obligations of such Subsidiaries or any other Subsidiaries that are not Loan Parties that is permitted by Section 6.01 or otherwise not prohibited by this Agreement; and

(oo) 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.

For purposes of this Section 6.02, the term "Indebtedness" shall be deemed to include interest and other amounts payable on such Indebtedness.

6.03 Investments, Loans and Advances. (i) Purchase or acquire (including pursuant to any merger with a person that is not a Wholly Owned Subsidiary immediately prior to such merger) any Equity Interests, evidences of Indebtedness or other securities of any other person, (ii) make any loans or advances to or Guarantees of the Indebtedness of any other person (other than in respect of (A) intercompany liabilities incurred in connection with the cash management, Tax and accounting operations of the Borrower and the Subsidiaries, (B) intercompany loans, advances or Indebtedness having a term not exceeding 364 days (inclusive of any roll-overs or extensions of terms) and made in the ordinary course of business or consistent with industry practice and (C) accounts receivable, credit card and debit card receivables constituting Cash Equivalents, trade credit, advances to customers, commission, travel and similar advances to officers and employees, in each case made in the ordinary course of business), or (iii) purchase or otherwise acquire, in one transaction or a series of related transactions, (x) all or substantially all of the property and assets or business of another person or (y) assets constituting a business unit, line of business or division of such person (each of the foregoing, an "Investment"), except:

(a) (i) Investments by any Loan Party in any other Loan Party (or any entity that will become a Loan Party as a result of such Investment) and (ii) Investments by any Subsidiary that is not a Loan Party in any Loan Party or any other Subsidiary that is not a Loan Party;

(b) (i) Permitted Acquisitions and (ii) Cash Equivalents and Investments that were Cash Equivalents when made;

(c) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business or consistent with industry practice and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business or consistent with industry practice;

(d) Hedging Agreements entered into for non-speculative purposes;

(e) Investments by the Borrower or any Subsidiary in an aggregate outstanding amount (valued at the time of the making thereof, and without giving effect to any subsequent change in value) that, immediately after giving effect to the making of such Investment (together with all other Investments made pursuant to this clause (e) and then outstanding), would not exceed the sum of (X) the greater of $25,000,000 and 25% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period, plus (Y) so long as, at the time thereof and immediately after giving effect thereto, no Event of Default under Section 7.01(b), (c), (h) or (i) shall have occurred and be continuing or would result therefrom, any portion of the Cumulative Credit on the date of such election that the Borrower elects to apply to this Section 6.03(e)(Y), which such election shall be set forth in a written notice of a Responsible Officer thereof, which notice shall set forth calculations in reasonable detail the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied;

(f) 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 Uniform Commercial Code Article 4 customary trade arrangements with customers;

(g) promissory notes and other non-cash consideration received in connection with Dispositions permitted by Section 6.04;

(h) any Investment so long as, (i) at the time thereof and immediately after giving effect thereto, no Event of Default shall have occurred and be continuing or would result therefrom (or, in the case of an Investment constituting a Limited Condition Acquisition, no Event of Default shall have occurred and be continuing as of the applicable LCA Test Date or would result therefrom and no Event of Default shall have occurred and be continuing under Section 7.01(b), (c), (h) or (i) as of the date the of the consummation of such Limited Condition Acquisition or would result therefrom) and (ii) subject to Section 1.06, immediately after giving effect to such Investment, the Total Net Leverage Ratio as of the end of the Test Period then most recently ended (calculated on a pro forma basis) would not exceed 4.00 to 1.00;

(i) the equity Investments made by each Group Member prior to the Closing Date in any of its Subsidiaries;

(j) (i) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, independent contractors and members of management, taken together with all other Investments pursuant to this clause (j)(i) that are at that time outstanding, not to exceed the greater of (a) $2,500,000 and (b) 2.5% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period determined at the time of making such Investment and (ii) 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, in each case incurred in the ordinary course of business or consistent with industry practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants to fund such person's purchase of Equity Interests of the Borrower;

(k) Investments constituting Indebtedness permitted under Section 6.01 hereof (including, for the avoidance of doubt, guarantees in respect thereof) and guarantees of leases (other than Finance Leases) or of other obligations that do not constitute Indebtedness and which are not prohibited by this Agreement, in each case entered into in the ordinary course of business;

(l) Investments in which the payment made therefor is made solely with equity interests of the Borrower not resulting in a Change in Control;

(m) the Investments, loans and advances existing as of the date hereof which are set forth on Schedule 6.03 hereto which are not otherwise permitted by this Section 6.03;

(n) any Investment in securities or other assets not constituting Cash Equivalents or investment grade securities and received in connection with a Disposition made in accordance with Section 6.04;

(o) any Investment acquired by the Borrower or any Subsidiary:

(i) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any 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);

(ii) in satisfaction of judgments against other persons;

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

(iv) 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 Borrower or any Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;

(p) (a) guarantees of Indebtedness permitted under Section 6.01, 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 Subsidiary in compliance with Section 6.02;

(q) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 6.06 (except transactions described in clauses (f), (k), (n), (q) or (v) of such Section);

(r) 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 in the ordinary course of business or consistent with industry practice;

(s) 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 industry practice by the Borrower or any Subsidiary;

(t) 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;

(u) the purchase or other acquisition of any Indebtedness of the Borrower or any Subsidiary to the extent not otherwise prohibited hereunder;

(v) Investments in joint ventures and Unrestricted Subsidiaries, taken together with all other Investments made pursuant to this clause (v) that are at that time outstanding not to exceed (as of the date such Investment is made) the greater of (i) $25,000,000 and (ii) 25% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period determined at the time of making such Investment;

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

(x) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 6.04; and

(y) Investments resulting from pledges and deposits permitted pursuant to Section 6.02.

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 Subsidiary in respect of such Investment (provided that, with respect to amounts received other than in the form of Cash Equivalents, such amount shall be equal to the fair market value (as determined in good faith by the Borrower) of such consideration).

6.04 Mergers, Consolidations and Sales of Assets. Merge, dissolve, liquidate, amalgamate into or consolidate with any other person, or make any Disposition (including, in each case, pursuant to an LLC Division or LP Division or an allocation of assets to a Series LLC or Series LP), except that this Section 6.04 shall not prohibit:

(a) if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing or would result therefrom, (i) the merger or consolidation of any Subsidiary with or into the Borrower in a transaction in which the Borrower is the survivor, (ii) the merger or consolidation of any Subsidiary with or into any Subsidiary Loan Party in a transaction in which the surviving or resulting entity is or becomes a Subsidiary Loan Party and, in the case of each of clauses (i) and (ii), no person other than the Borrower or a Subsidiary Loan Party receives any consideration (unless otherwise permitted by Section 6.03), (iii) the merger or consolidation of any Subsidiary that is not a Subsidiary Loan Party with or into any other Subsidiary that is not a Subsidiary Loan Party, (iv) the liquidation or dissolution or change in form of entity of any Subsidiary if the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and the Borrower or any Subsidiary receiving all of the assets of the relevant dissolved or liquidated Subsidiary, (v) any Subsidiary may merge or consolidate with any other person in order to effect an Investment permitted pursuant to Section 6.03 so long as the continuing or surviving person shall be a Subsidiary (unless otherwise permitted by Section 6.03), which shall be a Loan Party if the merging or consolidating Subsidiary was a Loan Party and which together with each of its Subsidiaries shall have complied with any applicable requirements of Section 5.10, (vi) any Subsidiary may merge or consolidate with any other person in order to effect an Asset Sale otherwise permitted pursuant to this Section 6.04 or (vii) the Borrower may merge or consolidate with or into any other person; *provided* that if the person formed by or surviving any such merger or consolidation is not the Borrower (such other person, the "Successor Borrower"), (A) the Successor Borrower shall be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia, (B) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents pursuant to supplements to the Loan Documents or other documents or instruments, in each case in a form reasonably satisfactory to the Administrative Agent, (C) the Successor Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer stating that such merger or consolidation complies with the applicable requirements set forth in this clause (a)(vii) (including the no Event of Default requirement set forth above) and, if reasonably requested by the Administrative Agent, a customary opinion of counsel and such other security documentation and filings, officer's certificates and organizational documentation that is reasonably requested by the Administrative Agent (it being understood that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement);

(b) Dispositions to the Borrower or a Subsidiary (upon voluntary liquidation or otherwise); provided that any Dispositions by a Loan Party to a Subsidiary that is not a Subsidiary Loan Party in reliance on this clause (b) shall be made in compliance with Section 6.03;

(c) other Dispositions of assets in an aggregate amount not to exceed $15,000,000; provided, that the Net Proceeds thereof, if any, are applied in accordance with Section 2.11(b) to the extent required thereby;

(d) Dispositions for fair market value (as determined in good faith by the Borrower) so long as (i) the Net Proceeds thereof, if any, are applied in accordance with Section 2.11(b) to the extent required thereby, (ii) at the time of such Disposition (other than any such Disposition made pursuant to a commitment entered into at a time when no Event of Default exists), no Event of Default has occurred and is continuing or would result therefrom and (iii) at least 75% of the proceeds of such Disposition consist of Cash Equivalents; provided that, for purposes of this clause (iii), each of the following shall be deemed to be Cash Equivalents: (a) the amount of any liabilities (as shown on the Borrower's or such Subsidiary's most recent balance sheet or in the notes thereto) that are assumed by the transferee of any such assets or are otherwise cancelled in connection with such transaction, (b) any notes or other obligations or other securities or assets received by the Borrower or such Subsidiary from the transferee that are converted by the Borrower or such Subsidiary into cash within 180 days after receipt thereof (to the extent of the cash received), (c) any Designated Non-Cash Consideration received by the Borrower or any of its Subsidiaries in such Disposition having an aggregate fair market value (as determined in good faith by the Borrower), taken together with all other Designated Non-Cash Consideration received pursuant to this clause (d) that is at that time outstanding, not to exceed $5,000,000 (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value), (d) the amount of Indebtedness of any Subsidiary that is no longer a Subsidiary as a result of such Disposition, to the extent that the Borrower and each other Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with the Disposition and (e) consideration consisting of Indebtedness of the Borrower or a Subsidiary (other than Indebtedness that is subordinated in right of payment to the Loan Obligations) received from persons who are not the Borrower or a Subsidiary in connection with the Disposition and that is cancelled;

(e) any Disposition to effect the formation of any Subsidiary that is a Divided LLC or Divided LP, as applicable and would otherwise not be prohibited hereunder; provided that any disposition or other allocation of any assets (including any Equity Interests of such Divided LLC or a Divided LP) in connection therewith is otherwise permitted hereunder;

(f) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property, (ii) an amount equal to the net proceeds of such Disposition are applied to the purchase price of such replacement property within 90 days or (iii) such Disposition is allowable under Section 1031 of the Code, or any comparable or successor provision, is for like property and for use in a business in compliance with Section 6.07;

(g) any usual and customary leases, subleases, licenses or sublicenses entered into in the ordinary course of business or consistent with industry practice and that do not materially interfere with the business of the Borrower and its Subsidiaries, taken as a whole;

(h) Dispositions of Cash Equivalents;

(i) Investments permitted by Section 6.03, Restricted Payments permitted by Section 6.05, Voluntary Junior Prepayments permitted by Section 6.08 and Liens permitted by Section 6.02, in each case, other than by reference to this Section 6.04(i);

(j) Dispositions in connection with a transaction permitted under Section 6.10;

(k) Dispositions of accounts in the ordinary course of business in connection with the settlement or compromise thereof;

(l) any Disposition of 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 of business;

(m) any Disposition of improvements made to leased real property to landlords in the ordinary course of business or consistent with industry practice;

(n) any Disposition of 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 Subsidiaries, taken as a whole, to conduct its business in the ordinary course;

(o) leases to its franchisees or leases or subleases to operators of portions of the travel centers, including, without limitation, restaurants, gaming rooms, alternative fuel operations and other provisional services or property relating to the operating of travel centers in the ordinary course of business;

(p) [reserved];

(q) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other agreement;

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

(s) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any casualty event) with respect to assets;

(t) 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;

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

(v) 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;

(w) the unwinding of any Hedging Agreement;

(x) 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;

(y) 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 Subsidiaries taken as a whole;

(z) the issuance or other Disposition of Equity Interests of the Borrower, so long as such issuance or other Disposition does not result in a Change in Control;

(aa) the issuance of directors' qualifying shares and shares of Equity Interests of Foreign Subsidiaries issued to foreign nationals as required by any applicable Requirement of Law; and

(bb) the Dispositions of any non-core assets (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its 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.

Notwithstanding anything to the contrary in this Section 6.04, in no event shall the Borrower and its Subsidiaries be permitted to sell all or substantially all of the assets of the Borrower and its Subsidiaries (taken as a whole) pursuant to this Section 6.04.

6.05 Dividends and Distributions. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock that is prohibited by Section 6.01) of the person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any Subsidiary to purchase or acquire) any of the Borrower's Equity Interests (other than through the issuance of additional Equity Interests (other than Disqualified Stock that is prohibited by Section 6.01) of the person redeeming, purchasing, retiring or acquiring such Equity Interests) (all of the foregoing, "Restricted Payments"); provided, however, that:

(a) Restricted Payments may be made to the Borrower or any Subsidiary of the Borrower (or, in the case of non-Wholly Owned Subsidiaries, Restricted Payments may be made to the Borrower or any Subsidiary that is a direct or indirect parent of such non-Wholly Owned Subsidiary and to each other owner of Equity Interests of such non-Wholly Owned Subsidiary on a pro rata basis (or more favorable basis from the perspective of the Borrower or such Subsidiary) based on their relative ownership interests);

(b) so long as no Event of Default has occurred and is continuing or would result therefrom and, immediately after giving effect to such Restricted Payment, the Total Net Leverage Ratio as of the end of the Test Period then most recently ended (calculated on a pro forma basis) would not exceed 5.00 to 1.00, Restricted Payments, in an aggregate amount, not to exceed a portion of the Cumulative Credit on the date of such election that the Borrower elects to apply to this Section 6.05(b), which such election shall be set forth in a written notice of a Responsible Officer thereof, which notice shall set forth calculations in reasonable detail of the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied;

(c) any Restricted Payment may be made so long as no Event of Default has occurred and is continuing or would result therefrom and immediately after giving effect to such Restricted Payment, the Total Net Leverage Ratio as of the end of the Test Period then most recently ended (calculated on a pro forma basis) would not exceed 3.50 to 1.00;

(d) Borrower may make Restricted Payments in the form of cash in lieu of fractional shares or units of Equity Interests in connection with any Restricted Payment or Permitted Acquisition, in each case as permitted hereunder;

(e) Borrower may repurchase Equity Interests of Borrower deemed to occur upon the cashless exercise of stock options or warrants if such Equity Interests represents a portion of the exercise price of such options or warrants; provided, that, no Loan Party shall pay, or be required to pay, any amounts in respect of any such repurchase other than in the form of Equity Interests of Borrower;

(f) 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 Section 6.05;

(g) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of any Equity Interests of the Borrower or any Subsidiary, including any accrued and unpaid dividends thereon ("Treasury Capital Stock") made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Subsidiary) of Equity Interests of the Borrower (other than Disqualified Stock) ("Refunding Capital Stock") and (y) within 120 days of such sale or issuance;

(h) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Subsidiary) of Refunding Capital Stock made within 120 days of such sale or issuance;

(i) 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 Borrower held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or any permitted transferees thereof) of the Borrower or any of its Subsidiaries 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 in connection with any such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management of the Borrower or any of its Subsidiaries; *provided* that the aggregate amount of Restricted Payments made under this clause (i) does not exceed the greater of (x) $2,500,000 and (y) 2.5% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period in any fiscal year with unused amounts in any fiscal year being carried over to the next succeeding fiscal years; *provided, further* that each of the amounts in any fiscal year under this clause (i) may be increased by an amount not to exceed:

(i) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or any permitted transferees thereof) of the Borrower or any of its Subsidiaries that occurs after the Closing Date; *plus*

(ii) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or any permitted transferees thereof) of the Borrower or any of its Subsidiaries 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*

(iii) the cash proceeds of "key-man" life insurance policies received by the Borrower or its Subsidiaries after the Closing Date; *minus*

(iv) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (i), (ii) and (iii) of this clause (i);

(j) payments and distributions to dissenting equityholders of the Borrower or 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 the Borrower or any Subsidiary that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement; and

(k) the Borrower may make Restricted Payments (A) in the form of cash payments in lieu of the issuance of fractional shares in connection with any dividend, split or combination thereof in connection with any Investment permitted hereunder or the exercise or vesting of warrants, options, restricted stock units or similar incentive interests or other securities convertible into or exchangeable for Equity Interests of the Borrower or otherwise to honor a conversion requested by a holder thereof or (B) consisting of (1) payments made or expected to be made in respect of withholding or similar Taxes payable by any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or any permitted transferees thereof) of the Borrower or any of its Subsidiaries, (2) payments or other adjustments to outstanding Equity Interests in accordance with any management equity plan, stock option plan or any other similar employee benefit or incentive plan, agreement or arrangement in connection with any Restricted Payment and/or (3) repurchases of Equity Interests in consideration of the payments described in clause (A) and/or (B) above, including deemed repurchases in connection with the exercise or vesting of stock options, restricted stock units or similar incentive interests.

6.06 Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with an aggregate value in excess of the greater of (x) $5,000,000 and (y) 5% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period with, any of its Affiliates (other than the Borrower and the Subsidiaries or any person that becomes a Subsidiary as a result of such transaction); provided that (x) a transaction (or series of related transactions) shall be permitted hereunder if it is on terms that are substantially no less favorable, when taken as a whole, to the Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate and (y) the foregoing restrictions shall not apply to or prohibit:

(a) leases in existence on the Closing Date;

(b) transactions among or between any Group Member and any other Group Member which are not prohibited by this Agreement or any other Loan Document;

(c) regularly scheduled payments of fees and other amounts, reimbursement of expenses and indemnities due and payable in accordance with the terms of the Shared Services Agreement as in effect on the Closing Date or as amended and replaced thereafter so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Borrower to the Lenders when taken as a whole, as compared to the Shared Services Agreement in effect on the Closing Date;

(d) the purchase, acquisition or lease of any property from, or the sale, transfer or lease of any property to, any SVC Company (i) in the ordinary course of business or (ii) pursuant to the reasonable requirements of the applicable Group Member's business and upon fair and reasonable terms as reasonably determined by the Borrower;

(e) (a) transactions between or among the Borrower and one or more Subsidiaries or between or among Subsidiaries or, in any case, any entity that becomes a Subsidiary as a result of such transaction and (b) any merger, consolidation or amalgamation of the Borrower; *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;

(f) (a) Restricted Payments permitted by Section 6.05 (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 Investment(s) permitted by Section 6.03 or any acquisition otherwise permitted hereunder, (c) Indebtedness permitted by Section 6.01 and (d) Voluntary Junior Prepayments permitted by Section 6.08;

(g) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors of the Borrower or any Subsidiary or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice;

(h) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower or any Subsidiary;

(i) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower or any Subsidiary;

(j) the payment of reasonable fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management, consultants or independent contractors (or any permitted transferees thereof) of the Borrower or any Subsidiary;

(k) transactions in which the Borrower or any 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 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 Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Subsidiary with a person that is not an Affiliate of the Borrower on an arm's-length basis;

(l) the existence of, or the performance by the Borrower or any 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);

(m) the existence of, or the performance by the Borrower or any 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 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 (m) 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;

(n) 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 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;

(o) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock prohibited by Section 6.01) of the Borrower 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;

(p) payments by the Borrower or any 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;

(q) payments to or from, and transactions with, any joint venture in the ordinary course of business or consistent with industry practice (including, any cash management activities related thereto);

(r) any lease entered into between the Borrower or any Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

(s) intellectual property licenses in the ordinary course of business and consistent with industry practice;

(t) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower pursuant to any equity holders agreement or registration rights agreement entered into on or after the Closing Date;

(u) transactions permitted by, and complying with, Section 6.04 solely for the purpose of reincorporating the Borrower in a new permitted jurisdiction;

(v) (a) transactions with a person that is an Affiliate of the Borrower (other than an Unrestricted Subsidiary) solely because the Borrower or any 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 or any Subsidiary;

(w) (i) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (ii) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower or any Subsidiary; and

(x) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock prohibited by Section 6.01) of the Borrower.

6.07 Business of the Borrower and the Subsidiaries. Notwithstanding any other provisions hereof, substantively alter the character of their business, taken as a whole, from the business conducted by them on the Closing Date and any Similar Business.

6.08 Limitation on Voluntary Prepayments and Modifications of Junior Financing.

(a) (i) Make, directly or indirectly, any voluntary prepayment or other voluntary distribution (whether in cash, securities or other property) of, or in respect of, any Junior Financing, or any voluntary payment or other voluntary distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the voluntary purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Junior Financing, in each case prior to the scheduled maturity of such Junior Financing (each, a "Voluntary Junior Prepayment"), except for:

(I) Permitted Refinancings of any Junior Financing to the extent permitted under Section 6.01;

(II) payments of regularly-scheduled interest and fees due thereunder, other non-principal payments thereunder, mandatory prepayments thereunder and, to the extent this Agreement is then in effect, principal on the scheduled maturity date of any Junior Financing (or within twelve months thereof);

(III) so long as at the time of such Voluntary Junior Prepayment (or, in the case of a satisfaction and discharge, at the time of such satisfaction and discharge with respect to such Voluntary Junior Prepayment), (x) no Event of Default has occurred and is continuing or would result therefrom, and (y) the Total Net Leverage Ratio as of the end of the Test Period then most recently ended (calculated on a pro forma basis) would not exceed 5.00 to 1.00, Voluntary Junior Prepayments, in an aggregate amount, not to exceed a portion of the Cumulative Credit on the date of such election that the Borrower elects to apply to this Section 6.08(a)(i)(III), which such election shall be set forth in a written notice of a Responsible Officer thereof, which notice shall set forth calculations in reasonable detail of the amount of Cumulative Credit immediately prior to such election and the amount thereof elected to be so applied;

(IV) any Voluntary Junior Prepayment may be made so long as at the time of such Voluntary Junior Prepayment (or, in the case of a satisfaction and discharge, at the time of such satisfaction and discharge with respect to such Voluntary Junior Prepayment), (x) no Event of Default has occurred and is continuing or would result therefrom, and (y) the Total Net Leverage Ratio as of the end of the Test Period then most recently ended (calculated on a pro forma basis) would not exceed 3.50 to 1.00;

(V) (A) any Voluntary Junior Prepayment in exchange for, or out of the proceeds of the substantially concurrent sale or issuance of, Equity Interests of the Borrower and (B) any Voluntary Junior Prepayment consisting of or in connection with a conversion of any Junior Financing into Equity Interests of the Borrower;

(VI) any Voluntary Junior Prepayment made by exchange for, or out of the proceeds of, the substantially concurrent sale of, new Indebtedness of the Borrower or a Subsidiary, as the case may be, which is incurred or issued in compliance with Section 6.01 so long as: (A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount of (or accreted value, if applicable) unless otherwise permitted, *plus* any accrued and unpaid interest on the Junior Financing being so redeemed, defeased, repurchased, exchanged, acquired or retired for value, *plus* the amount of any premium (including call and tender premiums), defeasance costs, unused commitment amounts and any fees and expenses (including original issue discount, upfront fees and similar items) incurred in connection with the incurrence or issuance of such new Indebtedness, (B) such new Indebtedness is subordinated to the Loan Obligations at least to the same extent as determined by the Borrower in good faith as such Junior Financing so purchased, exchanged, redeemed, defeased, repurchased, acquired or retired for value, (C) such new Indebtedness has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Junior Financing being so redeemed, defeased, repurchased, exchanged, extinguished, acquired or retired and (D) such new Indebtedness has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Junior Financing being so redeemed, repaid, prepaid, extinguished, defeased, repurchased, exchanged, acquired or retired (calculated disregarding the effects of any prepayments or amortization); and

(VII) Voluntary Junior Prepayments in an aggregate principal amount pursuant to this clause (VII) not to exceed the greater of $10,000,000 and 10% of EBITDA of the Borrower and its Subsidiaries calculated on a pro forma basis for the then most recently ended Test Period.

(ii) Amend or modify, or permit the amendment or modification of, any provision of any Junior Financing having a principal amount in excess of $25,000,000, or any agreement, document or instrument evidencing or relating thereto, other than amendments or modifications (v) in connection with a Permitted Refinancing in respect thereof, (x) that are not materially adverse to Lenders when taken as a whole (as determined in good faith by the Borrower), (y) that do not affect the subordination or payment provisions thereof (if any) in a manner adverse to the Lenders when taken as a whole (as determined in good faith by the Borrower) or (z) that are permitted by the terms of any applicable subordination or intercreditor agreement to which the Administrative Agent or Collateral Agent is a party.

(b) Permit any Group Member to enter into any agreement or instrument that by its terms restricts (i) the payment of dividends or distributions to the Borrower or any Subsidiary Loan Party or (ii) the granting of Liens by any Group Member that is a Loan Party pursuant to the Security Documents to secure the Loan Obligations, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(I) restrictions imposed by Requirements of Law;

(II) contractual encumbrances or restrictions in effect on the Closing Date, including pursuant to the ABL Documents, the Unsecured Bonds and any Permitted Refinancing thereof;

(III) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Subsidiary pending the closing of such sale or disposition;

(IV) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business or consistent with industry practice;

(V) customary provisions contained in leases or licenses of Intellectual Property and other similar agreements entered into in the ordinary course of business or consistent with industry practice;

(VI) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(VII) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other Disposition of any asset permitted under Section 6.04 pending the consummation of such sale, transfer, lease or other Disposition;

(VIII) restrictions imposed by any agreement relating to Indebtedness permitted by this Agreement so long as the Liens granted to the Collateral Agent pursuant to the Security Documents are permitted by such restrictions;

(IX) any agreement in effect at the time such subsidiary becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary;

(X) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(XI) contractual encumbrances or restrictions by any Group Member that is not a Loan Party; and

(XII) contractual encumbrances or restrictions which the Borrower has reasonably determined in good faith will not materially impair the Borrower's ability to make payments under this Agreement when due.

6.09 Fiscal Year. In the case of the Borrower, permit any change to its fiscal year without prior notice 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.

6.10 Sale and Lease-Backs. Become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Borrower or such Subsidiary (a) has sold or transferred or is to sell or to transfer to any other person (other than the Borrower or any of its Subsidiaries), to the extent involving the sale of assets with a fair market value in excess of $20,000,000 in the aggregate and (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Borrower or such Subsidiary to any person (other than the Borrower or any of its Subsidiaries) in connection with such lease (it being understood that, for the avoidance of doubt, this Section shall not apply to, nor restrict in any way, Dispositions otherwise permitted pursuant to Section 6.04(m)).

ARTICLE VII

Events of Default

7.01 Events of Default. In case of the happening of any of the following events (each, an "Event of Default"):

(a) any representation or warranty made or deemed made by the Borrower or any Subsidiary Loan Party herein or in any other Loan Document or any certificate or document delivered pursuant hereto or thereto shall prove to have been false or misleading in any material respect (or, if qualified as to "materiality," "Material Adverse Effect" or similar language, in all respects) when so made or deemed made;

(b) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or in the payment of any fee or any other amount (other than an amount referred to in clause (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of (x) three Business Days in respect of interest and (y) five Business Days in respect of fees and other amounts;

(d) default shall be made in the due observance or performance by the Borrower of any covenant, condition or agreement contained in, Section 5.01(a) (solely in the case of the Borrower), 5.05(a) or 5.08 or in Article VI;

(e) default shall be made in the due observance or performance by any Loan Party of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (b), (c) and (d) above) and such default shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower;

(f) (i) any breach or default by the Borrower or any of the Subsidiaries occurs under any Material Indebtedness that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that, notwithstanding anything to the contrary in this clause (f)(i), an "Event of Default" under and as defined in the ABL Credit Agreement shall only result in an Event of Default under this Agreement if the Indebtedness under the ABL Credit Agreement is declared to be or becomes due and payable prior to its stated maturity as a result thereof or if such "Event of Default" is continuing for a period of 45 days after the ABL Agent has delivered a written notice to the Borrower of the occurrence of such "Event of Default", or (ii) the Borrower or any of the Subsidiaries shall fail to pay the principal of any Material Indebtedness at the stated final maturity thereof;

(g) there shall have occurred a Change in Control;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Group Member (other than an Immaterial Subsidiary), or of a substantial part of the property or assets of any Group Member (other than an Immaterial Subsidiary), under the U.S. Bankruptcy Code, as now constituted or hereafter amended, or any other Debtor Relief Law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Group Member (other than an Immaterial Subsidiary) or for a substantial part of the property or assets of any Group Member (other than an Immaterial Subsidiary) or (iii) the winding-up or liquidation of any Group Member (other than an Immaterial Subsidiary) (except in a transaction permitted hereunder); and such proceeding or petition shall continue undismissed for 30 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Group Member (other than an Immaterial Subsidiary) shall (i) voluntarily commence any proceeding or file any petition seeking relief under the U.S. Bankruptcy Code, as now constituted or hereafter amended, or any other Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (h) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Group Member (other than an Immaterial Subsidiary) or for a substantial part of the property or assets of any Group Member (other than an Immaterial Subsidiary), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable or admit in writing its inability or fail generally to pay its debts as they become due;

(j) the failure by any Group Member to pay one or more final judgments for payment of money aggregating in excess of $25,000,000 (to the extent not paid or covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 60 consecutive days;

(k) (i) an ERISA Event shall have occurred, (ii) the PBGC shall institute proceedings (including giving notice of intent thereof) to terminate any Plan or Plans, (iii) the Borrower or any Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is being terminated, within the meaning of Title IV of ERISA, or (iv) the Borrower shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan; and in each case in clauses (i) through (iv) above, such event or condition, together with all other such events or conditions described in clauses (i) through (iv) above, if any, could reasonably be expected to have a Material Adverse Effect; or

(l) (i) any Loan Document shall for any reason be asserted in writing by the Borrower or any Subsidiary Loan Party not to be a legal, valid and binding obligation of any Loan Party party thereto (other than in accordance with its terms), (ii) any security interest purported to be created by any Security Document and to extend to assets that constitute a material portion of the Collateral shall cease to be, or shall be asserted in writing by the Borrower or any other Loan Party not to be (other than, in each case, in accordance with its terms), a valid and perfected security interest (perfected as or having the priority required by this Agreement, the ABL/Term Intercreditor Agreement or the relevant Security Document and subject to such limitations and restrictions as are set forth herein and therein) in the Collateral covered thereby, (iii) a material portion of the Guarantees pursuant to the Loan Documents by the Subsidiary Loan Parties Guaranteeing the Loan Obligations shall cease to be in full force and effect (other than in accordance with the terms thereof) or (iv) any material provision of the ABL/Term Intercreditor Agreement shall cease, for any reason, to be in full force and effect, other than pursuant to the terms hereof or thereof, or as a result of acts or omissions of the Administrative Agent, the Collateral Agent or the Lenders; provided that no Event of Default shall occur under clause (i), (ii) or (iii) of this Section 7.01(l) if the Loan Parties cooperate with the Collateral Agent to replace or perfect such security interest and Lien, such security interest and Lien is replaced and the rights, powers and privileges of the Secured Parties are not materially adversely affected by such replacement;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) above), and at any time thereafter during the continuance of such event, the Administrative Agent, at the request of the Required Lenders, shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event with respect to the Borrower described in clause (h) or (i) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

7.02 Treatment of Certain Payments. Subject to the terms of the ABL/Term Intercreditor Agreement and any other applicable intercreditor agreement, any amount received by the Administrative Agent or the Collateral Agent from any Loan Party (or from proceeds of any Collateral) following any acceleration of the Loan Obligations under this Agreement or any Event of Default with respect to the Borrower under Section 7.01(h) or (i), in each case that is continuing, shall be applied: (i) first, ratably, to pay any fees, indemnities or expense reimbursements then due to the Administrative Agent and/or the Collateral Agent from the Borrower, (ii) second, towards payment of interest and fees then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, (iii) third, towards payment of other Loan Obligations then due from the Borrower or any Loan Party, ratably among the parties entitled thereto in accordance with the amounts of such Loan Obligations then due to such parties and (iv) last, the balance, if any, after all of the Loan Obligations have been paid in full, to the Borrower or as otherwise required by Requirements of Law.

ARTICLE VIII

The Agents

8.01 Appointment. (a) Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States of America, each of the Lenders hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender's behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent.

(b) In furtherance of the foregoing, each Lender hereby designates and appoints and authorizes the Collateral Agent to act as the agent of such Lender under this Agreement and the other Loan Documents, and each Lender irrevocably authorizes the Collateral Agent, in such capacity, to acquire, hold and enforce any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Loan Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent (and any Subagents appointed by the Collateral Agent pursuant to Section 8.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Collateral Agent) shall be entitled to the benefits of this Article VIII (including, without limitation, Section 8.07) as though the Collateral Agent (and any such Subagents) were an "Agent" under the Loan Documents, as if set forth in full herein with respect thereto.

8.02 Delegation of Duties. The Administrative Agent and the Collateral Agent may execute any of their respective duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care. Each Agent may also from time to time, when it deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a "Subagent") with respect to all or any part of the Collateral; provided that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent or the Collateral Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by an Agent to more fully or certainly vest in and confirm to such Subagent 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 promptly upon request by such Agent. If any Subagent, or successor thereto, shall become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent or the Collateral Agent until the appointment of a new Subagent. No Agent shall be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects with reasonable care.

8.03 Exculpatory Provisions. None of the Agents, or their respective Affiliates or any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by any Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. No Agent shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (b) no Agent shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall 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 such Agent or any of its Affiliates in any capacity. The Agents shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower or a Lender. No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

8.04 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to any Borrowing, that by its terms must be fulfilled to the satisfaction of a Lender, each Agent may presume that such condition is satisfactory to such Lender unless such Agent shall have received notice to the contrary from such Lender prior to such Borrowing. Each Agent may consult with legal counsel (including counsel to 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. Each Agent may deem and treat the Lender specified in the Register with respect to any amount owing hereunder as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with such Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all fees, liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all or other Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

8.05 Notice of Default. Neither Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all or other Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

8.06 Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any Affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into the business, operations, property, financial and other condition and creditworthiness of, the Loan Parties and their Affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, no Agent shall not any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party that may come into the possession of such Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

8.07 Indemnification. The Lenders agree to indemnify each Agent in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the amount of its pro rata share (based on its outstanding Term Loans hereunder), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The failure of any Lender to reimburse any Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to such Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse such Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse such Agent for such other Lender's ratable share of such amount. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder.

8.08 Agent in Its Individual Capacity. Each Agent and its Affiliates may make loans to, accept deposits from, and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

8.09 Successor Administrative Agent and Collateral Agent. The Administrative Agent or the Collateral Agent may resign as Administrative Agent or Collateral Agent, as applicable, upon 10 days' notice to the Lenders and the Borrower. If the Administrative Agent or the Collateral Agent shall resign as Administrative Agent or Collateral Agent under this Agreement and the other Loan Documents, then the Borrower shall have the right, subject to the reasonable consent of the Required Lenders (so long as no Event of Default under Section 7.01(b), (c), (h) or (i) shall have occurred and be continuing, in which case the Required Lenders shall have the right), to appoint a successor which shall be a bank with an office in the United States and who shall be a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, or an Affiliate of any such bank with an office in the United States, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent or Collateral Agent, as applicable, and the term "Administrative Agent" or "Collateral Agent", as applicable, shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's or Collateral Agent's rights, powers and duties as Administrative Agent or Collateral Agent, as applicable, shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or Collateral Agent, as applicable, or any of the parties to this Agreement or any holders of the Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is 10 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Borrower (or the Required Lenders) appoint a successor agent as provided for above. If no successor agent has accepted appointment as Collateral Agent by the date that is 10 days following a retiring Collateral Agent's notice of resignation, the retiring Collateral Agent's resignation shall nevertheless thereupon become effective (except in the case of the Collateral Agent holding collateral security on behalf of such Secured Parties, the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed), and the Lenders shall assume and perform all of the duties of the Collateral Agent hereunder until such time, if any, as the Borrower (or the Required Lenders) appoint a successor agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 8.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents. After any retiring Collateral Agent's resignation as Collateral Agent, the provisions of this Section 8.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent under this Agreement and the other Loan Documents.

8.10 Security Documents and Collateral Agent. The Lenders and the other Secured Parties authorize the Collateral Agent to release any Collateral or Guarantors in accordance with Section 9.18 or if approved, authorized or ratified in accordance with Section 9.08.

8.11 Right to Realize on Collateral and Enforce Guarantees. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (i) the Administrative Agent (irrespective of whether the principal of any Loan Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (A) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the Loan 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 and any Subagents allowed in such judicial proceeding, and (B) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (ii) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under the Loan Documents. 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 Loan 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.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that (a) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee pursuant to any Loan Document, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof, and all powers, rights and remedies under the Security Documents may be exercised solely by the Collateral Agent, and (b) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Loan Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other Disposition.

8.12 Withholding Tax. To the extent required by any applicable Requirement of Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by any applicable Loan Party and without limiting the obligation of any applicable Loan Party to do so) fully for, and shall make payable in respect thereof within 10 days after demand therefor, all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including penalties, fines, additions to Tax and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 8.12. The agreements in this Section 8.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Loan Obligations.

8.13 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, the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the 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 either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant 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, 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, the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

ARTICLE IX

Miscellaneous

9.01 Notices; Communications. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 9.01(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 electronic means 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:

(i) if to any Loan Party, the Administrative Agent or the Collateral Agent, to the address, electronic mail address or telephone number specified for such person on Schedule 9.01; and

(ii) if to any other Lender, to the address, electronic mail address or telephone number specified in its Administrative Questionnaire.

(b) 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. The Administrative Agent, the Collateral Agent or the Borrower may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by them, provided that approval of such procedures may be limited to particular notices or communications.

(c) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices delivered through electronic communications to the extent provided in Section 9.01(b) above shall be effective as provided in such Section 9.01(b).

(d) Any Loan Party may change its address for notices and other communications hereunder by notice to the Administrative Agent and the Collateral Agent. Any other party hereto may change its address for notices and other communications hereunder by notice to the other parties hereto.

(e) Documents required to be delivered pursuant to Section 5.04 may be delivered electronically (including as set forth in Section 9.17) and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Internet at the website address listed on Schedule 9.01, or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender entitled to access thereto and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that the Borrower shall notify the Administrative Agent (by electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

9.02 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such persons or on their behalf, and shall continue in full force and effect until the Termination Date. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.15, 2.16, 2.17, 8.12 and 9.05) shall survive the Termination Date.

9.03 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, the Administrative Agent and the Collateral Agent and when the Administrative Agent shall have received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent, the Collateral Agent and each Lender and their respective permitted successors and assigns.

9.04 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) except as permitted by Section 6.04, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in clause (c) of this Section 9.04), and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(b) (i) Subject to the conditions set forth in subclause (ii) below, any Lender may assign to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(I) the Borrower, which consent will be deemed to have been given if the Borrower has not responded within ten (10) Business Days after the delivery of any written request for such consent; provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund, or in the case of assignments during the primary syndication of the Commitments and Loans to persons identified to and agreed by the Borrower in writing prior to the Closing Date, or, if an Event of Default under Section 7.01(b), (c), (h) or (i) has occurred and is continuing, any other person; and

(II) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender, an Approved Fund, the Borrower or an Affiliate of the Borrower made in accordance with Section 9.04(h).

(ii) Assignments shall be subject to the following additional conditions:

(I) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitments or Loans, the amount of the Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1,000,000 or an integral multiple of $1,000,000 in excess thereof, unless each of the Borrower and the Administrative Agent otherwise consent; provided that such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Related Funds shall be treated as one assignment), if any;

(II) the parties to each assignment shall (1) execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent or (2) if previously agreed with the Administrative Agent, manually execute and deliver to the Administrative Agent an Assignment and Acceptance, in each case together with a processing and recordation fee of $3,500 (which fee may be waived or reduced in the reasonable discretion of the Administrative Agent (and which the Administrative Agent agrees to waive for all parties to the Fee Letter));

(III) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.17; and

(IV) the Assignee shall not be the Borrower or any of the Borrower's Subsidiaries except in accordance with Section 9.04(h).

For the purposes of this Section 9.04, "Approved Fund" shall mean any person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender. Notwithstanding the foregoing or anything to the contrary herein, no Lender shall be permitted to assign or transfer any portion of its rights and obligations under this Agreement to (A) any Ineligible Institution or (B) a natural person. Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent shall not have any responsibility or obligation to determine whether any Lender or potential Lender is an Ineligible Institution and the Administrative Agent shall have no liability with respect to any assignment made to an Ineligible Institution. Any assigning Lender shall, in connection with any potential assignment, provide to the Borrower a copy of its request (including the name of the prospective assignee) concurrently with its delivery of the same request to the Administrative Agent irrespective of whether or not an Event of Default under Section 7.01(b), (c), (h) or (i) has occurred and is continuing.

(iii) Subject to acceptance and recording thereof pursuant to subclause (v) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.05 (subject to the limitations and requirements of those Sections)); provided that an Assignee shall not be entitled to receive any greater payment pursuant to Section 2.17 than the applicable Assignor would have been entitled to receive had no such assignment occurred, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (d) of this Section 9.04 (except to the extent such participation is not permitted by such clause (d) of this Section 9.04, in which case such assignment or transfer shall be null and void).

(iv) The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal and stated interest amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent, the Collateral Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice; provided that no Lender shall, in such capacity, have access to, or be otherwise permitted to review any information in the Register other than information with respect to such Lender. The parties intend that any interest in or with respect to the Loans under this Agreement be treated as being issued and maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and any regulations thereunder (and any successor provisions), including without limitation under United States Treasury Regulations Section 5f.103-1(c) and Proposed Regulations Section 1.163-5 (and any successor provisions), and the provisions of this Agreement shall be construed in a manner that gives effect to such intent.

(v) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b) of this Section 9.04, if applicable, and any written consent to such assignment required by clause (b) of this Section 9.04 and any applicable tax forms, the Administrative Agent shall accept such Assignment and Acceptance and promptly record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this subclause (v).

(c) (i) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations in Loans and Commitments to one or more banks or other entities other than any Ineligible Institution (to the extent that the list of Ineligible Institutions has been made available to all Lenders; provided that regardless of whether the list of Ineligible Institutions has been made available to all Lenders, no Lender may sell participations in Loans or Commitments to an Ineligible Institution without the consent of the Borrower if the list of Ineligible Institutions has been made available to such Lender) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; provided that (x) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that both (1) requires the consent of each Lender directly affected thereby pursuant to clauses (i), (ii), (iii) or (vi) of the first proviso to Section 9.08(b) and (2) directly adversely affects such Participant (but, for the avoidance of doubt, not any waiver of any Default or Event of Default) and (y) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (c)(iii) of this Section 9.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the limitations and requirements of those Sections and Section 2.19) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 9.04. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.06 as though it were a Lender; provided that such Participant shall be subject to Section 2.18(c) as though it were a Lender. Notwithstanding the foregoing, each Loan Party and the Lenders acknowledge and agree that the Administrative Agent shall not have any responsibility or obligation to determine whether any Participant or potential Participant is an Ineligible Institution and the Administrative Agent shall have no liability with respect to any participation made to an Ineligible Institution.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts and stated interest amounts of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"). The entries in the Participant Register shall be conclusive absent manifest error, and each party hereto shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. Without limitation of the requirements of this Section 9.04(c), no Lender shall have any obligation to disclose all or any portion of a 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 other Loan Obligations under any Loan Document), except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other Loan Obligation is in registered form under Section 5f.103-1(c) and Proposed Section 1.163-5(b) of the United States Treasury Regulations (or, in each case, any amended or successor version) or is otherwise required by applicable law. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(iii) A Participant shall not be entitled to receive any greater payment under Section 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, which consent shall state that it is being given pursuant to this Section 9.04(c)(iii); provided that each potential Participant shall provide such information as is reasonably requested by the Borrower in order for the Borrower to determine whether to provide its consent.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 9.04 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in clause (d) above.

(f) [Reserved].

(g) If the Borrower wishes to replace the Loans with ones having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days' advance notice to the Lenders, instead of prepaying the Loans to be replaced, to (i) require the Lenders to assign such Loans to the Administrative Agent or its designees and (ii) amend the terms thereof in accordance with Section 9.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 9.08(d)). Pursuant to any such assignment, all Loans to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Loans were being optionally prepaid by the Borrower), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 9.05(b). By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Loans pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this clause (g) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(h) Notwithstanding anything to the contrary in this Agreement, including Section 2.18(c) (which provisions shall not be applicable to clauses (h) or (i) of this Section 9.04), any of the Borrower or its Subsidiaries may purchase by way of assignment and become an Assignee with respect to Term Loans at any time and from time to time from Lenders in accordance with Section 9.04(b) hereof (each, a "Permitted Loan Purchase"); provided that, in respect of any Permitted Loan Purchase, (A) upon consummation of any such Permitted Loan Purchase, the Loans purchased pursuant thereto shall be deemed to be automatically and immediately cancelled and extinguished in accordance with Section 9.04(i), (B) in connection with any such Permitted Loan Purchase, any of the Borrower or its Subsidiaries and such Lender that is the assignor (an "Assignor") shall execute and deliver to the Administrative Agent a Permitted Loan Purchase Assignment and Acceptance (and for the avoidance of doubt, shall not be required to execute and deliver an Assignment and Acceptance pursuant to Section 9.04(b)(ii)(II)) and shall otherwise comply with the conditions to assignments under this Section 9.04, (C) no Default or Event of Default would exist immediately after giving effect on a pro forma basis to such Permitted Loan Purchase and (D) no proceeds of loans incurred under the ABL Credit Agreement may be used to fund any such Permitted Loan Purchase.

(i) Each Permitted Loan Purchase shall, for purposes of this Agreement be deemed to be an automatic and immediate cancellation and extinguishment of such Term Loans and the Borrower shall, upon consummation of any Permitted Loan Purchase, notify the Administrative Agent that the Register be updated to record such event as if it were a prepayment of such Loans.

9.05 Expenses; Indemnity. (a) The Borrower agrees to pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or the Collateral Agent in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent or the Collateral Agent in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable and documented fees, charges and disbursements of White & Case LLP, counsel for the Administrative Agent, the Collateral Agent and the Arrangers, and, if necessary, the reasonable and documented fees, charges and disbursements of one local counsel per appropriate jurisdiction, and (ii) all reasonable and documented out-of-pocket expenses incurred by the Agents or any Lender in connection with the enforcement of their rights in connection with this Agreement and the other Loan Documents, in connection with the Loans made hereunder, including the reasonable and documented fees, charges and disbursements of a single counsel for all such persons, taken as a whole, and, if necessary, a single local counsel in each appropriate jurisdiction for all such persons, taken as a whole (and, in the case of an actual or perceived conflict of interest where such person affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel with the Borrower's prior written consent (not to be unreasonably withheld), of another firm of counsel for such affected person).

(b) The Borrower agrees to indemnify the Administrative Agent, the Collateral Agent, each Arranger, each Lender, each of their respective Affiliates, successors and assignors, and each of their respective directors, officers, employees, agents, trustees, advisors and members (each such person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented expenses, including reasonable and documented counsel fees, charges and disbursements (excluding the allocated costs of in house counsel and limited to not more than one counsel for all such Indemnitees, taken as a whole, and, if necessary, a single local counsel in each appropriate jurisdiction for all such Indemnitees, taken as a whole (and, in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel with the Borrower's prior written consent (not to be unreasonably withheld), of another firm of counsel for such affected Indemnitee)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby, (ii) the use of the proceeds of the Loans, (iii) any Environmental Liability in any way related to the Borrower or any Subsidiary, (iv) any actual or alleged presence, Release or threatened Release of or exposure to Hazardous Materials at, in, under, on, from or to any property currently or formerly owned, leased or operated by the Borrower or any Subsidiary or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its subsidiaries or Affiliates; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (y) arose from any claim, actions, suits, inquiries, litigation, investigation or proceeding that does not involve an act or omission of the Borrower or any of its Affiliates and is brought by an Indemnitee against another Indemnitee (other than any claim, actions, suits, inquiries, litigation, investigation or proceeding against any Agent or any Arranger in its capacity as such). None of the Indemnitees (or any of their respective Affiliates), the Borrower or any of its Subsidiaries shall be responsible or liable to any Indemnitee (or any of its Affiliates), the Borrower or any of its subsidiaries, Affiliates or stockholders or any other person or entity for any special, indirect, consequential or punitive damages, which may be alleged as a result of the Loans or the Transactions; provided that nothing contained in this sentence shall limit the Loan Parties' indemnification and reimbursement obligations to the extent such special, indirect, consequential or punitive damages are included in any third party claim with respect to which such Indemnitee is entitled to indemnification hereunder. The provisions of this Section 9.05 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Loan Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent or any Lender. All amounts due under this Section 9.05 shall be payable within 15 days after written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(c) This Section 9.05 shall not apply to any Taxes (other than Taxes that represent losses, claims, damages, liabilities and related expenses resulting from a non-Tax claim), which shall be governed exclusively by Section 2.17 and, to the extent set forth therein, Section 2.15.

(d) To the fullest extent permitted by applicable law, each party hereto shall not assert, and hereby waive, any claim against any Indemnitee and any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof; provided that nothing contained in this sentence shall limit the Loan Parties' indemnification and reimbursement obligations to the extent such special, indirect, consequential or punitive damages are included in any third party claim with respect to which such Indemnitee is entitled to indemnification hereunder. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby except to the extent such damages are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties.

(e) The agreements in this Section 9.05 shall survive the resignation of the Administrative Agent and the Collateral Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Loan Obligations and the termination of this Agreement.

9.06 Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower or any Subsidiary Loan Party against any of and all the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the obligations may be unmatured. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may have.

9.07 Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (OTHER THAN AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

9.08 Waivers; Amendment. (a) No failure or delay of the Administrative Agent, the Collateral Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by clause (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower or any other Loan Party in any case shall entitle such person to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (w) with respect to any amendment or waiver contemplated in clause (ix) below, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Facility Lenders under the applicable Tranche or Tranches, as applicable (and not the Required Lenders), (x) as provided in Section 2.14, (y) in the case of this Agreement (other than as set forth in clauses (w) and (y) above), pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders, and (z) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each Loan Party party thereto and the Administrative Agent or the Collateral Agent, as applicable, and consented to by the Required Lenders; provided, however, that no such agreement shall:

(i) decrease or forgive the principal amount of, or extend the final maturity of, or decrease the rate of interest on, any Loan, without the prior written consent of each Lender directly adversely affected thereby (which, notwithstanding the foregoing, such consent of such Lender directly adversely affected thereby shall be the only consent required hereunder to make such modification); provided that any amendment to the financial definitions in this Agreement shall not constitute a reduction in the rate of interest for purposes of this clause (i),

(ii) increase or extend the Commitment of any Lender without the prior written consent of such Lender (which, notwithstanding the foregoing, such consent of such Lender shall be the only consent required hereunder to make such modification); provided that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default, mandatory prepayments or of a mandatory reduction in the aggregate Commitments shall not constitute an increase or extension of the Commitments of any Lender for purposes of this clause (ii),

(iii) extend or waive any Term Loan Installment Date or reduce the amount due on any Term Loan Installment Date or extend any date on which payment of interest on any Loan is due, without the prior written consent of each Lender directly adversely affected thereby (which, notwithstanding the foregoing, such consent of such Lender directly adversely affected thereby shall be the only consent required hereunder to make such modification),

(iv) amend the provisions of Sections 2.18 and/or 7.02 with respect to the pro rata application of payments required thereby in a manner that by its terms modifies the application of such payments required thereby to be on a less than pro rata basis, without the prior written consent of each Lender adversely affected thereby (which, notwithstanding the foregoing, such consent of such Lender directly adversely affected thereby shall be the only consent required hereunder to make such modification),

(v) amend or modify the provisions of this Section 9.08 or the definition of the terms "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby, in each case except, for the avoidance of doubt, as otherwise provided in Section 9.08(d) and (e) (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Loans and Commitments are included on the Closing Date),

(vi) amend or modify the "waterfall" that applies following enforcement of the Loan Documents pursuant to Section 7.02 or the ABL/Term Intercreditor Agreement without the written consent of each Lender directly and adversely affected thereby (which, notwithstanding the foregoing, such consent of such Lender directly adversely affected thereby shall be the only consent required hereunder to make such modification),

(vii) amend or modify any provisions of any Loan Documents in a way that would result in the subordination payments in respect of, or of all or substantially all of the Liens on the Collateral securing, the Term Loans without the written consent of each Lender directly and adversely affected thereby (which, notwithstanding the foregoing, such consent of such Lender directly adversely affected thereby shall be the only consent required hereunder to make such modification),

(viii) release all or substantially all of the Collateral or all or substantially all of the Subsidiary Loan Parties from their respective Guarantees under the Subsidiary Guarantee Agreement (or all or substantially all of the value of such Guarantees), unless, in the case of a Subsidiary Loan Party, all or substantially all the Equity Interests of such Subsidiary Loan Party is sold or otherwise Disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender, or

(ix) amend, waive or otherwise modify any term or provision with respect to any Tranche of Term Loans which directly affects Lenders of one or more Tranches of Term Loans and does not directly affect Lenders under any other Tranche of Term Loans, in each case, without the written consent of the Required Facility Lenders under such applicable Tranche of Term Loans (and in the case of multiple Tranches which are affected, such Required Facility Lenders shall consent together as one Tranche);

provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of (A) the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such agreement, as applicable, or (B) the Collateral Agent hereunder without the prior written consent of the Collateral Agent acting as such at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.08 and any consent by any Lender pursuant to this Section 9.08 shall bind any Assignee of such Lender.

(c) Without the consent of any Lender, the Loan Parties and the Administrative Agent and/or Collateral Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law or this Agreement or in each case to otherwise enhance the rights or benefits of any Lender under any Loan Document.

(d) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to permit additional extensions of credit to be outstanding hereunder from time to time and the accrued interest and fees and other obligations in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and other obligations in respect thereof and (b) to include appropriately the holders of such extensions of credit in any determination of the requisite lenders required hereunder, including Required Lenders.

(e) Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (but without the consent of any Lender) to the extent necessary (A) to effect an alternate interest rate in a manner consistent with Section 2.14, or (B) to cure any ambiguity, omission, defect or inconsistency.

(f) With respect to the incurrence of any secured or unsecured Indebtedness (including any intercreditor agreement relating thereto), the Borrower may elect (in its discretion, but shall not be obligated) to deliver to the Administrative Agent a certificate of a Responsible Officer at least three Business Days prior to the incurrence thereof (or such shorter time as the Administrative Agent may agree in its reasonable discretion), together with either drafts of the material documentation relating to such Indebtedness or a description of such Indebtedness (including a description of the Liens intended to secure the same or the subordination provisions thereof, as applicable) in reasonably sufficient detail to be able to make the determinations referred to in this paragraph, which certificate shall either, at the Borrower's election, (x) state that the Borrower has determined in good faith that such Indebtedness satisfies the requirements of the applicable provisions of Sections 6.01 and 6.02 (taking into account any other applicable provisions of this Section 9.08), in which case such certificate shall be conclusive evidence thereof, or (y) request the Administrative Agent to confirm, based on the information set forth in such certificate and any other information reasonably requested by the Administrative Agent, that such Indebtedness satisfies such requirements, in which case the Administrative Agent may determine whether, in its reasonable judgment, such requirements have been satisfied (in which case it shall deliver to the Borrower a written confirmation of the same), with any such determination of the Administrative Agent to be conclusive evidence thereof, and the Lenders hereby authorize the Administrative Agent to make such determinations.

(g) Notwithstanding the foregoing, no Lender consent is required to effect any amendment or supplement to the ABL/Term Intercreditor Agreement or other intercreditor agreement or arrangement permitted under this Agreement that is for the purpose of adding the holders of any Indebtedness as expressly contemplated by the terms of the ABL/Term Intercreditor Agreement or such other intercreditor agreement or arrangement permitted under this Agreement, as applicable (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent in consultation with the Borrower, are required to effectuate the foregoing; provided that such other changes are not adverse, in any material respect, to the interests of the Lenders taken as a whole); provided, further, that no such agreement shall amend, modify or otherwise directly and adversely 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.

(h) This Section 9.08 shall be subject to any contrary provision of Sections 1.03, 2.22, 2.23, 2.24 and 2.25 and the Lenders hereby authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in the reasonable opinion of the Administrative Agent and the Borrower solely in order to give effect to, and the reflect the existence of, any Term Facility Increase pursuant to Section 2.22, any Incremental Term Facility pursuant to Section 2.22, any Incremental Equivalent Debt pursuant to Section 2.23, any Extension pursuant to Section 2.24, any Specified Refinancing Debt pursuant to Section 2.25, in each case in accordance with the terms set forth therein (including the addition thereof as a "Tranche" hereunder, if applicable).

9.09 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law, as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all fees and charges that are treated as interest under applicable law payable to such Lender, shall be limited to the Maximum Rate; provided that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation.

9.10 Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

9.11 **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.**

9.12 Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

9.13 Counterparts; Electronic Execution of Assignments and Certain Other Documents.

(a) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 9.03. Delivery of an executed counterpart to this Agreement by electronic transmission pursuant to procedures approved by the Administrative Agent shall be as effective as delivery of a manually signed original.

(b) The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Acceptances, amendments, Borrowing Requests, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

9.14 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

9.15 Jurisdiction; Consent to Service of Process. (a) Each of the parties hereto irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than 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, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation 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, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, the Collateral Agent or any Lender may otherwise have to bring any action or proceeding relating to the Collateral in the courts of any jurisdiction.

(b) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any such New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement or any other Loan Document to serve process in any other manner permitted by law.

9.16 Confidentiality. Each of the Lenders and each of the Agents agrees that it shall maintain in confidence any information relating to the Borrower and any Subsidiary furnished to it by or on behalf of the Borrower or any Subsidiary (other than information that (a) has become generally available to the public other than as a result of a disclosure by such party, (b) has been independently developed by such Lender or such Agent without violating this Section 9.16 or (c) was available to such Lender or such Agent from a third party having, to such person's knowledge, no obligations of confidentiality to the Borrower or any other Loan Party) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know and any numbering, administration or settlement service providers or to any person that approves or administers the Loans on behalf of such Lender (so long as each such person shall have been instructed to keep the same confidential in accordance with this Section 9.16), except: (A) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, (B) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or self-regulatory authorities, including the National Association of Insurance Commissioners or the Financial Industry Regulatory Authority, Inc., (C) to its parent companies, Affiliates or auditors (so long as each such person shall have been instructed to keep the same confidential in accordance with this Section 9.16), (D) in order to enforce its rights under any Loan Document in a legal proceeding, (E) to any pledgee under Section 9.04(d) or any other prospective assignee of, or prospective Participant in, any of its rights under this Agreement (so long as such person shall have been instructed to keep the same confidential in accordance with this Section 9.16) and (F) to any direct or indirect contractual counterparty in Hedging Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 9.16); provided that, in the case of clauses (E) and (F), no information may be provided to any Ineligible Institution or person who is known to be acting for an Ineligible Institution.

9.17 Platform; Borrower Materials. The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform"), and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its Subsidiaries or any of their respective securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials to be distributed to Lenders on the Platform that may be distributed to the Public Lenders and that (i) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as solely containing information that is either (A) of a type that would be reasonably be expected to be publicly available for the Borrower as a public reporting company or (B) not material (although it may be sensitive and proprietary) with respect to the Borrower or its Subsidiaries or any of their respective securities for purposes of United States Federal and state securities laws (provided, however, that such Borrower Materials shall be treated as set forth in Section 9.16, to the extent such Borrower Materials constitute information subject to the terms thereof), (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (iv) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

9.18 Release of Liens and Guarantees.

(a) The Lenders and the other Secured Parties hereby irrevocably agree that the Liens granted to the Collateral Agent by the Loan Parties on any Collateral shall be automatically released: (i) in full upon the occurrence of the Termination Date as set forth in Section 9.18(c) below; (ii) upon the Disposition of such Collateral by any Loan Party to a person that is not (and is not required to become) a Loan Party in a transaction not prohibited by this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 9.08), (iv) to the extent that the property constituting such Collateral is owned by any Subsidiary Loan Party, upon the release of such Guarantor from its obligations under its Guarantee under the Subsidiary Guarantee Agreement in accordance with the Subsidiary Guarantee Agreement or this Agreement or clause (b) below (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (v) as provided in Section 8.10 (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (vi) as required by the Collateral Agent to effect any Disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Security Documents and (vii) if required or permitted under the terms of the ABL/Term Intercreditor Agreement. Any such release (other than pursuant to clause (i) above) shall not in any manner discharge, affect, or impair the Loan Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any Disposition, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders and the other Secured Parties hereby irrevocably agree that any Subsidiary that is a Guarantor shall be automatically released from its Guarantee under the Subsidiary Guarantee Agreement upon consummation of any transaction not prohibited by this Agreement resulting in such Subsidiary ceasing to constitute a Subsidiary or becoming an Excluded Subsidiary; *provided* that the release of any Subsidiary that is a Guarantor from its obligations under the Loan Documents if such Subsidiary Loan Party (x) becomes an Excluded Subsidiary of the type described in clause (b) of the definition thereof and (y) remains a Subsidiary, shall only be permitted if such Subsidiary is or becomes an Excluded Subsidiary for a bona fide legitimate business purpose of the Borrower and its Subsidiaries and not for the primary purpose of evading the Collateral and Guarantee Requirement.

(b) The Lenders and the other Secured Parties hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this Section 9.18 and to return to the Borrower all possessory collateral (including share certificates (if any)) held by it in respect of any Collateral so released, all without the further consent or joinder of any Lender or any other Secured Party. Any representation, warranty or covenant contained in any Loan Document relating to any such Collateral or Guarantor shall no longer be deemed to be made. In connection with any release hereunder, the Administrative Agent and the Collateral Agent shall promptly (and the Secured Parties hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by the Borrower and at the Borrower's expense in connection with the release of any Liens created by any Loan Document in respect of such Subsidiary, property or asset; provided that any such release shall be without recourse to or warranty by the Administrative Agent or Collateral Agent.

(c) Notwithstanding anything to the contrary contained herein or any other Loan Document, on the Termination Date, all Liens granted to the Collateral Agent by the Loan Parties on any Collateral and all obligations of the Borrower and the other Loan Parties under any Loan Documents (other than such obligations that expressly survive the Termination Date pursuant to the terms hereof) shall, in each case, be automatically released and, upon request of the Borrower, the Administrative Agent and/or the Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to evidence the release its security interest in all Collateral (including returning to the Borrower all possessory collateral (including all share certificates (if any)) held by it in respect of any Collateral), and to evidence the release of all obligations under any Loan Document (other than such obligations that expressly survive the Termination Date pursuant to the terms hereof), whether or not on the date of such release there may be any contingent indemnification obligations or expense reimburse claims not then due. Any such release of obligations shall be deemed subject to the provision that such obligations shall be reinstated if after such release any portion of any payment in respect of the obligations Guaranteed thereby shall be rescinded, avoided, or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made. The Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or the Collateral Agent (and their respective representatives) in connection with taking such actions to release security interest in all Collateral and all obligations under the Loan Documents as contemplated by this Section 9.18(c).

9.19 USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act 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, 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.

9.20 Secured Cash Management Agreements and Secured Hedging Agreements. Except as otherwise expressly set forth herein or in the Subsidiary Guarantee Agreement or any Security Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 7.02, any Guarantee or any Collateral by virtue of the provisions hereof or of the Subsidiary Guarantee Agreement or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article 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, Loan Obligations arising under Secured Cash Management Agreements and Secured Hedging Agreements unless the Administrative Agent has received written notice of such Loan Obligations, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

9.21 Intercreditor Agreements. Each Lender (and, by its acceptance of the benefits of any Security Document, each other Secured Party) hereunder (a) agrees that it will be bound by and will take no actions contrary to the provisions of the ABL/Term Intercreditor Agreement and any intercreditor agreement contemplated by this Agreement and (b) authorizes and instructs the Administrative Agent and the Collateral Agent to enter into the ABL/Term Intercreditor Agreement and any other intercreditor agreement contemplated by this Agreement, in each case, as Collateral Agent and on behalf of such Lender or other Secured Party. In the event of any conflict between the terms of any Loan Document and the terms of the ABL/Term Intercreditor Agreement, the terms of the ABL/Term Intercreditor Agreement shall control.

9.22 Acknowledgment and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

9.23 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a Guarantee or otherwise, for Hedging 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 the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.23, 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 party.

(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).

(D) "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.

(E) "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).

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first written above.

TRAVELCENTERS OF AMERICA INC.,
as Borrower

By: /s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

CITIBANK, N.A.,
as Administrative Agent and as a Lender

By: /s/ Mike Tortora
Name: Mike Tortora
Title: Managing Director & Vice President

[Signature Page to TA Credit Agreement]

DELAWARE TRUST COMPANY,
as Collateral Agent

By: /s/ Alan R. Halpern
Name: Alan R. Halpern
Title: Vice President

[Signature Page to TA Credit Agreement]

Exhibit 10.2

[Execution]

AMENDMENT NO. 4 TO
AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT AND RELEASE

AMENDMENT NO. 4 TO AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT AND RELEASE (this "Amendment"), dated as of December 14, 2020, by and among TravelCenters of America Inc., a Maryland corporation which was formerly a Delaware limited liability company known as TravelCenters of America LLC ("Parent" or "Holding"), TA Operating LLC, a Delaware limited liability company ("TA Operating", and together with Parent, each individually, a "Borrower" and collectively, "Borrowers"), TA West Greenwich LLC, a Maryland limited liability company ("TA West Greenwich"), Petro Franchise Systems LLC, a Delaware limited liability company ("Petro Franchise"), TA Franchise Systems LLC, a Delaware limited liability company ("TA Franchise"), TA Operating Nevada LLC, a Nevada limited liability company ("TA Nevada"), QSL Franchise Systems LLC, a Maryland limited liability company ("QSL Franchise"), QSL Operating LLC, a Maryland limited liability company ("QSL Operating"), QSL RE LLC, a Maryland limited liability company ("QSL RE"), TA Operating Montana LLC, a Delaware limited liability company ("TA Montana", and together with TA West Greenwich, Petro Franchise, TA Franchise, TA Nevada, QSL Franchise, QSL Operating and QSL RE, each individually, a "Guarantor" and collectively, "Guarantors"), all of the Lenders party to the Loan Agreement defined below (each individually, a "Lender" and collectively, "Lenders") and Wells Fargo Capital Finance, LLC, a Delaware limited liability company, in its capacity as agent for Lenders (in such capacity, "Agent").

W I T N E S S E T H:

WHEREAS, Agent, certain of the Lenders, Borrowers and Guarantors have entered into financing arrangements pursuant to which Agent and certain of the Lenders have made and may make loans and advances and have provided and may provide other financial accommodations to Borrowers as set forth in the Amended and Restated Loan and Security Agreement, dated October 25, 2011, by and among Agent, Lenders party thereto, Borrowers and Guarantors party thereto, as amended or supplemented by the Joinder Agreement, dated February 26, 2014, the Joinder Agreement, dated February 27, 2014, the Joinder Agreement, dated June 24, 2016, Amendment No. 1 to Amended and Restated Loan and Security Agreement, dated as of December 9, 2014, Amendment No. 2 to Amended and Restated Loan and Security Agreement, dated as of October 12, 2018, Amendment No. 3 to Amended and Restated Loan and Security Agreement, dated as of July 19, 2019, and the Joinder Agreement, dated February 7, 2020 (as the same has been further amended, modified or supplemented prior to the date hereof, the "Loan Agreement"), and the other Financing Agreements (as defined in the Loan Agreement);

WHEREAS, Borrowers have requested that Agent and Lenders agree to amend the Loan Agreement and to release TA Montana as a Guarantor, and Agent and Lenders are willing to agree to such amendment and release, subject to the terms and conditions contained herein; and

WHEREAS, by this Amendment, Borrowers, Guarantors, Agent and Lenders desire and intend to evidence such amendments;

NOW THEREFORE, in consideration of the foregoing, and the respective agreements and covenants contained herein, the parties hereto agree as follows:

1. Interpretation. For purposes of this Amendment, unless otherwise defined herein, capitalized terms used herein which are defined in the Loan Agreement shall have the meanings given to such terms in the Loan Agreement.

2. Amendments to Loan Agreement. Effective as of the Amendment No. 4 Effective Date, the Loan 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 bold and double-underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in Exhibit A hereto. All schedules and exhibits to the Loan Agreement, as in effect immediately prior to the date Amendment No. 4 Effective Date, shall constitute schedules and exhibits to the Loan Agreement, except that Schedule 1.61 to the Loan Agreement (Excluded Subsidiaries) is hereby deleted in its entirety and is replaced with Schedule 1.61 to Exhibit A hereto. By executing this Amendment, each of Borrowers, Guarantors, Lenders and Agent hereby consents and agrees to each of the amendments and modifications to the Loan Agreement contained herein (including, without limitation, any exhibit or schedule attached hereto).

3. Consent to Amendment to Pledge Agreement. By executing this Amendment, each of the Lenders hereby consents to Amendment No. 4 to Amended and Restated Pledge and Security Agreement, substantially in the form of Exhibit B hereto ("Amendment No. 4 to Pledge Agreement").

4. Release of TA Montana.

(a) Upon the Amendment No. 4 Effective Date (i) TA Montana shall automatically cease to be bound by, and shall automatically cease to be a Guarantor under, the Loan Agreement and the other Financing Agreements, (ii) TA Montana shall be automatically released from, and shall have no liabilities, obligations or duties under, the Loan Agreement or any and all of the other Financing Agreements, (iii) all security interests and liens upon the assets of TA Montana heretofore granted by TA Montana to Agent pursuant to the Financing Agreements shall be released and terminated and (iv) all security interests and liens upon the Capital Stock issued by TA Montana heretofore granted by Parent to Agent pursuant to the Financing Agreements shall be released and terminated.

(b) Upon the Amendment No. 4 Effective Date (i) Agent, upon TA Montana's request and at Borrowers' expense, shall deliver to TA Montana (or any person that Agent believes in good faith represents TA Montana or its designees) any UCC termination statements necessary to release, as of record, the financing statements between Agent, as secured party, and TA Montana, as debtor, that are currently filed of record pursuant to the Financing Agreement, and (ii) TA Montana or its designees are authorized by Agent to file such UCC termination statements.

(c) Upon the Amendment No. 4 Effective Date, at the request of TA Montana and at the Borrowers' expense, Agent agrees to execute and deliver such other and further documents and instruments reasonably requested by TA Montana in order to effect or evidence more fully the matters covered by this Section 4.

5. Representations and Warranties. Each Borrower and Guarantor represents and warrants to and in favor of Agent and each Lender as follows, which representations and warranties are continuing and shall survive the execution and delivery hereof, the truth and accuracy of each, together with the representations and warranties in the other Financing Agreements, being a condition of the effectiveness of this Amendment:

(a) Neither the execution and delivery of this Amendment, Amendment No. 4 to the Pledge Agreement or the Amended Fee Letter defined below (collectively, the "Amendment Documents") nor the consummation of the transactions contemplated hereby or thereby, nor compliance with the provisions hereof or thereof (i) has resulted in or shall result in the creation or imposition of any Lien upon any of the Collateral, except in favor of Agent and except as contemplated by the Term Loan Documents, (ii) has resulted in or shall result in the incurrence, creation or assumption of any Indebtedness of any Borrower or Guarantor, except as expressly permitted under Section 9.9 of the Loan Agreement, (iii) has violated or shall violate any applicable laws or regulations or any order or decree of any court or Governmental Authority in any material respect, (iv) does or shall conflict with or result in the breach of, or constitute a default in any respect under any material mortgage, deed of trust, security agreement, agreement or instrument to which any Borrower or Guarantor is a party or may be bound (including, without limitation, the Term Loan Documents), or (v) violates or shall violate any provision of the certificate of formation, operating agreement or other organizational documents of any Borrower or Guarantor.

(b) Each Amendment Document has been duly authorized, executed and delivered by all necessary action on the part of Borrowers and Guarantors which are party thereto and is in full force and effect as of the date hereof, as the case may be, and the obligations of Borrowers or Guarantors contained therein constitute legal, valid and binding obligations of Borrowers and Guarantors, as the case may be, enforceable against them in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar law limiting creditors' rights generally and by general equitable principles.

(c) All of the representations and warranties set forth in the Loan Agreement as amended hereby, and the other Financing Agreements, are true and correct in all material respects after giving effect to the provisions of the Amendment Documents, except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all material respects as of such date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified by materiality in the text thereof).

(d) No action of, or filing with, or consent of any Governmental Authority, and no material approval or consent of any other party, is required to authorize, or is otherwise required in connection with, the execution, delivery and performance of the Amendment Documents, except for any actions or filings already made or taken and approvals or consents previously obtained.

(e) As of the date hereof, no Default or Event of Default exists or has occurred and is continuing.

6. Conditions Precedent. This Amendment shall not be effective until each of the following conditions precedent is satisfied:

(a) Agent shall have received counterparts of this Amendment, duly authorized, executed and delivered by Borrowers, Guarantors and each Lender;

(b) Agent shall have received (i) the Second Amended and Restated Fee Letter, in form and substance reasonably satisfactory to Agent (the "Amended Fee Letter"), duly authorized, executed and delivered by Borrowers, and (ii) in immediately available funds (or Agent shall have charged the Loan Accounts for) the amount of the fees which are due and payable under the Amended Fee Letter on the Amendment No. 4 Effective Date;

(c) Agent shall have received a certificate of status (or the applicable equivalent thereof) with respect to each Borrower and Guarantor, dated within thirty (30) days of the date hereof, such certificate to be issued by the appropriate Governmental Authority of the jurisdiction of organization of such Borrower or Guarantor, as applicable, which certificate shall indicate that such Borrower or Guarantor, as applicable, is in good standing in such jurisdiction;

(d) Agent shall have received an officer's certificate or secretary's certificate, duly authorized, executed and delivered by an appropriate officer of each Borrower or Guarantor, in form and substance reasonably satisfactory to Agent, setting forth the incumbency and specified signatures of each applicable officer and approving the transactions contemplated by this Amendment, together with organizational documents and records of all requisite corporate or limited liability company action and proceedings in connection with this Amendment;

(e) Agent shall have received legal opinions from New York, Maryland and Delaware counsel to the Borrowers and Guarantors, in form and substance reasonably satisfactory to Agent, regarding this Amendment;

(f) Agent shall have received Amendment No. 4 to Pledge Agreement, duly authorized, executed and delivered by the parties thereto;

(g) Agent shall have received its internal Flood Disaster Prevention Act approval;

(h) At least ten Business Days prior to the Amendment No. 4 Effective Date, with respect to any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, Agent shall receive a Beneficial Ownership Certification in relation to such Loan Party;

(i) At least ten Business Days prior to the Amendment No. 4 Effective Date, Agent shall have received all documentation and other information about the Borrowers and Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations (including the PATRIOT Act) that has been requested by the Agent in writing at least fifteen Business Days prior to the Amendment No. 4 Effective Date; and

(j) No Default or Event of Default shall exist or have occurred and be continuing.

7. Effect of this Amendment. The Amendment Documents constitute the entire agreement of the parties with respect to the subject matter thereof, and supersedes all prior oral or written communications, memoranda, proposals, negotiations, discussions, term sheets and commitments with respect to the subject matter thereof. Except as expressly provided in the Amendment Documents (including in the Exhibits thereto), no other changes or modifications to the Loan Agreement or any of the other Financing Agreements, or waivers of or consents under any provisions of any of the foregoing, are intended or implied by the Amendment Documents, and in all other respects the Financing Agreements are hereby specifically ratified, restated and confirmed by all parties hereto as of the Amendment No. 4 Effective Date. Without limiting the generality of the foregoing, each Loan Party (other than TA Montana) (a) hereby absolutely and unconditionally acknowledges and reaffirms its obligations under the Loan Agreement, the Guarantee Agreement and the other Financing Agreements, (b) reaffirms that the Obligations are and shall continue to be secured by Liens on the Collateral which are hereby ratified and affirmed in all respects by such Loan Party as of the Amendment No. 4 Effective Date, and (c) agrees that the Liens granted to Agent for the benefit of the Secured Parties pursuant to the Loan Agreement and the other Financing Agreements, and any other documents or instruments executed, filed or recorded in connection therewith, shall remain outstanding and in full force and effect, without interruption or impairment of any kind, in accordance with the terms of the Loan Agreement and the other Financing Agreements. The applicable provisions of this Amendment and the Loan Agreement shall be read and interpreted as one agreement. To the extent that any provision of the Loan Agreement or any of the other Financing Agreements conflicts with any provision of this Amendment, the provision of this Amendment shall control. Upon and after the effectiveness of this Amendment, each reference in the Loan Agreement to "this Agreement", "hereunder", "herein", "hereof" or words of like import referring to the Loan Agreement, and each reference in the other Financing Agreements to "the Loan Agreement", "thereunder", "therein", "thereof" or words of like import referring to the Loan Agreement, shall mean and be a reference to the Loan Agreement as modified and amended hereby.

8. Further Assurances. Borrowers and Guarantors shall execute and deliver such additional documents and take such additional action as may be reasonably requested by Agent to effectuate the provisions and purposes of this Amendment.

9. Governing Law. The validity, interpretation and enforcement of this Amendment and the other Financing Agreements (except as otherwise provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

10. Binding Effect. This Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

11. Counterparts. This Amendment, any documents executed in connection herewith and any notices delivered under this Amendment, may be executed by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its sole discretion, to accept, deny, or condition acceptance of any electronic signature on this Amendment, any documents executed in connection herewith or on any notice delivered to Lender under this Amendment. This Amendment, any documents executed in connection herewith and any notices delivered under this Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. Delivery of an executed counterpart of a signature page of this Amendment, any documents executed in connection herewith and any notices as set forth herein will be as effective as delivery of a manually executed counterpart of this Amendment, any such documents or notice.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the day and year first above written.

BORROWERS

TRAVELCENTERS OF AMERICA INC.

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

TA OPERATING LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

GUARANTORS

TA WEST GREENWICH LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

PETRO FRANCHISE SYSTEMS LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

TA FRANCHISE SYSTEMS LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

TA OPERATING NEVADA LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

TA OPERATING MONTANA LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

QSL OPERATING LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title:Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

QSL RE LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title:Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

QSL FRANCHISE SYSTEMS LLC

By:/s/ Peter J. Crage
Name: Peter J. Crage
Title: Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

AGENT

WELLS FARGO CAPITAL FINANCE, LLC,
as Agent and a Lender

By:/s/ Peter Possemato
Name: Peter Possemato
Title: Director

[Signature Page to Amendment No. 4 to Amended and Restated Loan and Security Agreement]

LENDERS

PNC BANK, NATIONAL ASSOCIATION

By:/s/ Todd Poulson
Name: Todd Poulson
Title: Vice President

[Signature Page to Amendment No. 4 to Amended and Restated Loan and Security Agreement]

LENDERS

BANK OF AMERICA, N.A.

By:/s/ Peter Droof
Name: Peter Droof
Title: Sr. Vice President

[Signature Page to Amendment No. 4 to Amended and Restated Loan and Security Agreement]

LENDERS

SIEMENS FINANCIAL SERVICES, INC.

By:/s/ Jeffrey B. Iervese
Name: Jeffrey B. Iervese
Title: Vice President

By: /s/ John Finore
Name: John Finore
Title: Vice President

[Signature Page to Amendment No. 4 to Amended and Restated Loan and Security Agreement]

LENDERS

CITIBANK, N.A.

By:/s/ Allister Chan
Name: Allister Chan
Title: Director and Vice President

[Signature Page to Amendment No. 4 to Amended and Restated Loan and Security Agreement]

LENDERS

THE HUNTINGTON NATIONAL BANK

By:/s/ Elizabeth Murray
Name: Elizabeth Murray
Title: Senior Vice President

[Signature Page to Amendment No. 4 to Amended and Restated Loan and Security Agreement]

LENDERS

U.S. BANK, NATIONAL ASSOCIATION

By:/s/ Thomas P. Chidester
Name: Thomas P. Chidester
Title: Vice President

[Signature Page to Amendment No. 4 to Amended and Restated Loan and Security Agreement]

Exhibit A
to
Amendment No. 4 to Amended and
Restated Loan and Security Agreement

See attached.

Exhibit A

[Execution]

~~[Execution]~~

Exhibit A to Amendment No. ~~3~~4 to Amended and Restated Loan and Security Agreement

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

by and among

TRAVELCENTERS OF AMERICA LLC
TA OPERATING LLC,
as Borrowers

~~TRAVELCENTERS OF AMERICA HOLDING COMPANY LLC~~
PETRO FRANCHISE SYSTEMS LLC
TA FRANCHISE SYSTEMS LLC
TA OPERATING NEVADA LLC
~~TA OPERATING MONTANA LLC~~
QSL OPERATING LLC
QSL RE LLC
QSL FRANCHISE SYSTEMS LLC
TA WEST GREENWICH LLC,
as Guarantors

WELLS FARGO CAPITAL FINANCE, LLC,
as Agent

and

THE LENDERS FROM TIME TO TIME PARTY HERETO,
as Lenders

WELLS FARGO CAPITAL FINANCE, LLC,
as Sole Lead Arranger, Manager and Bookrunner

PNC BANK, NATIONAL ASSOCIATION,
as Syndication Agent

Dated: October 25, 2011

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INDEX TO
EXHIBITS AND SCHEDULES

AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

This Amended and Restated Loan and Security Agreement, dated October 25, 2011 (this "Agreement"), is entered into by and among TravelCenters of America LLC, a Delaware limited liability company ("Parent" or "Holding"), TA Operating LLC, a Delaware limited liability company ("TA Operating" and together with Parent and each other Person that becomes a "Borrower" after the date hereof in accordance with Section 9.21 hereof, each individually a "Borrower" and collectively, "Borrowers"), ~~TravelCenters of America Holding Company~~TA West Greenwich LLC, a ~~Delaware~~Maryland limited liability company ("~~Holding~~TA West Greenwich"), Petro Franchise Systems LLC, a Delaware limited liability company ("Petro Franchise"), TA Franchise Systems LLC, a Delaware limited liability company ("TA Franchise"), TA Operating Nevada LLC, a Nevada limited liability company ("TA Nevada"), ~~TA Operating Montana LLC, a Delaware limited liability company ("TA Montana"),~~ QSL Operating LLC, a Maryland limited liability company ("QSL Operating"), QSL RE LLC, a Maryland limited liability company ("QSL RE"), and QSL Franchise Systems LLC, a Maryland limited liability company ("QSL Franchise" and together with ~~Holding~~TA West Greenwich, Petro Franchise, TA Franchise, TA Nevada, ~~TA Montana,~~ QSL Operating, QSL RE and each other Person that becomes a "Guarantor" after the date hereof in accordance with Section 9.21 hereof, each individually a "Guarantor" and collectively, "Guarantors"), the parties hereto from time to time as lenders, whether by execution of this Agreement or an Assignment and Acceptance or other agreement described in Section 2.3 hereof (each individually, a "Lender" and collectively, "Lenders"), and Wells Fargo Capital Finance, LLC, a Delaware limited liability, successor by merger to Wachovia Capital Finance Corporation (Central), in its capacity as agent for Lenders (in such capacity, "Agent" as hereinafter further defined).

W I T N E S S E T H:

WHEREAS, Borrowers and certain Guarantors are parties to the Loan and Security Agreement, dated November 19, 2007, by and among Borrowers, such Guarantors, the lenders party thereto ("Existing Lenders") and Agent, as amended by Amendment No. 1 to Loan and Security Agreement, dated as of June 30, 2008 (as so amended and in effect immediately prior to the effectiveness hereof, the "Existing Loan Agreement"), pursuant to which Existing Lenders (or Agent on behalf of Existing Lenders) have made loans (the "Existing Loans") and arranged to be issued letters of credit (the "Existing Letters of Credit") to or for the account of Borrowers;

WHEREAS, on August 27, 2008, each of Petro Distributing Inc., Petro Financial Corporation and Petro Holdings Financial Corporation were dissolved, and on December 1, 2008, TCA PSC GP LLC was dissolved;

WHEREAS, on September 1, 2008, Petro Stopping Centers, L.P. was merged with and into TA Operating;

WHEREAS, on September 2, 2008, Petro Franchise became a guarantor party to the Existing Loan Agreement pursuant to the Joinder Agreement, dated September 2, 2008, by and among Borrowers, certain Guarantors and Agent;

WHEREAS, on May 1, 2014, Girkin Development, LLC was merged with and into TA Operating;

WHEREAS, on February 27, 2014, TA Operating Montana LLC was joined to this Agreement as a Guarantor;

WHEREAS, on June 5, 2015, TA Leasing LLC was merged with and into TA Operating;

WHEREAS, on June 24, 2016, each of QSL Operating LLC, QSL RE LLC and QSL Franchise Systems LLC was joined to this Agreement as a Guarantor;

WHEREAS, on March 22, 2017, TA Operating Texas LLC was merged with and into TA Operating;

WHEREAS, effective as of August 1, 2019, Parent has converted from a Delaware limited liability company formerly known as TravelCenters of America LLC to a Maryland corporation known as TravelCenters of America Inc., as set forth in the Plan of Conversion, adopted as of July 29, 2019, duly authorized by the board of directors of the Parent;

WHEREAS, on February 7, 2020, TA WEST GREENWICH LLC was joined to this Agreement as a Guarantor;

WHEREAS, on September 9, 2020 TravelCenters of America Holding Company LLC was merged with and into TravelCenters of America Inc.;

WHEREAS, on the Amendment No. 4 Effective Date, TA Operating Montana LLC was released as a Guarantor;

WHEREAS, the parties to the Existing Loan Agreement desire to amend and restate the Existing Loan Agreement as provided herein;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the Existing Loan Agreement shall be (and hereby is) amended and restated as follows:

SECTION 1. DEFINITIONS

For purposes of this Agreement, (a) capitalized terms used herein which are defined in Article 1, Article 8 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement, and (b) the following terms shall have the respective meanings given to them below:

"ABL Priority Collateral" shall have the meaning set forth in the Intercreditor Agreement.

"Account Party" shall have the meaning set forth in Section 2.2(h) hereof

"Accounts" shall mean, as to each Loan Party, all present and future rights of such Loan Party to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card.

"Acquired Business" shall have the meaning set forth in the definition of Permitted Acquisitions.

"Adjusted Eurodollar Rate" shall mean the rate per annum as published by ICE Benchmark Administration Limited (or any successor page or other commercially available source as the Agent may designate from time to time) as of 11:00 a.m., London time, two Business Days prior to the commencement of the requested interest period, for a term, and in an amount, comparable to the interest period and the amount of the Eurodollar Rate Loan requested (whether as an initial Revolving Loan or as a continuation of an Eurodollar Rate Loan or as a conversion of a Base Rate Loan to an Eurodollar Rate Loan) by Borrowers (and, if any such published rate is below zero, then the rate determined pursuant to this clause shall be deemed to be zero). Each determination of the Adjusted Eurodollar Rate shall be made by the Agent and shall be conclusive in the absence of manifest error.

"Administrative Borrower" shall mean Parent in its capacity as Administrative Borrower on behalf of itself and the other Borrowers pursuant to Section 6.7 hereof and its successors and assigns in such capacity.

"Affected Financial Institution" shall mean (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" shall mean, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds ten (10%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person, (b) any Person of which such Person beneficially owns or holds ten (10%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds ten (10%) percent or more of the equity interests and (c) any director or executive officer of such Person. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "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 and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise. For the avoidance of doubt, no HPT Company shall be deemed to be an Affiliate of any Loan Party unless either such HPT Company directly or indirectly beneficially owns or holds ten (10%) percent or more of any class of Voting Stock or other equity interests in such Loan Party or any Loan Party beneficially directly or indirectly owns or holds ten (10%) percent or more of any class of Voting Stock or other equity interests in such HPT Company.

"Agent" shall mean Wells Fargo Capital Finance, LLC, a Delaware limited liability, successor by merger to Wachovia Capital Finance Corporation (Central), in its capacity as agent on behalf of Lenders pursuant to the terms hereof and any replacement or successor agent hereunder.

"Agent Payment Account" shall mean account no. 37072820231201035 of Agent at Wells Fargo Bank, 420 Montgomery Street, San Francisco, California, ABA No. 121-000-248, Re: Travel Centers of America LLC, or such other account of Agent as Agent may from time to time designate to Administrative Borrower as the Agent Payment Account for purposes of this Agreement and the other Financing Agreements.

"Amendment No. 1" shall mean Amendment No. 1 to Amended and Restated Loan and Security Agreement, dated as of December 19, 2014 by and among Agent, certain Lenders party thereto and certain Loan Parties, as the same now exists or may hereafter be amended, amended and restated, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No. 1 Effective Date" is the date on which the conditions precedent to the effectiveness of Amendment No. 1 shall have been satisfied.

"Amendment No. 2" shall mean Amendment No. 2 to Amended and Restated Loan and Security Agreement, dated as of October 12, 2018, by and among Agent, certain Lenders party thereto and Loan Parties, as the same now exists or may hereafter be amended, amended and restated, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No. 2 Effective Date" is the date on which the conditions precedent to the effectiveness of Amendment No. 2 shall have been satisfied.

"Amendment No. 3" shall mean Amendment No. 3 to Amended and Restated Loan and Security Agreement, dated as of July 19, 2019, by and among Agent, the Lenders party thereto and Loan Parties, as the same now exists or may hereafter be amended, amended and restated, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No. 3 Effective Date" is the date on which the conditions precedent to the effectiveness of Amendment No. 3 shall have been satisfied.

"Amendment No. 4" shall mean Amendment No. 4 to Amended and Restated Loan and Security Agreement and Release, dated as of December 14, 2020, by and among Agent, the Lenders party thereto and Loan Parties, as the same now exists or may hereafter be amended, amended and restated, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No.4 Effective Date" is the date on which the conditions precedent to the effectiveness of Amendment No. 4 shall have been satisfied.

"Anti-Corruption Laws" shall mean 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, money laundering 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" shall mean 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 Fee Rate" shall mean, for each month ending after the date of this Agreement, (a) ~~one-quarter~~three-eighths of one (~~0.250~~0.375%) percent, if the difference (if positive) between (i) the Maximum Credit and (ii) the average daily principal balance of the outstanding Revolving Loans and Letters of Credit during such month (or part thereof) exceeds fifty (50%) percent of the Maximum Credit, or (b) ~~three-eighths~~one-half of one (~~0.375~~0.50%) percent, if the difference (if positive) between (i) the Maximum Credit and (ii) the average daily principal amount of the outstanding Revolving Loans and Letters of Credit during such month (or part thereof) is less than or equal to fifty (50%) percent of the Maximum Credit.

"Applicable Indebtedness" shall have the meaning set forth in the definition of the term "Weighted Average Life to Maturity".

"Applicable Margin" shall mean, at any time, as to the interest rate for Base Rate Loans and the interest rate for Eurodollar Rate Loans, the applicable percentage (on a per annum basis) set forth below if the Monthly Average Excess Availability for the immediately preceding calendar month is at or within the amounts indicated for such percentage as of the last day of the immediately preceding calendar month:

Tier	Monthly Average Excess Availability	Applicable Eurodollar Rate Margin	Applicable Base Rate Margin
1	Greater than 40% of Maximum Credit	1.25%	0.25%
2	Less than or equal to 40% of Maximum Credit and greater than 20% of Maximum Credit	1.50%	0.50%
3	Less than or equal to 20% of Maximum Credit	1.75%	0.75%

provided, that, (i) the Applicable Margin shall be calculated and established once each calendar month effective as of the first day of such calendar month and shall remain in effect until adjusted thereafter after the end of the next calendar month, and (ii) the Applicable Margin for the period from the Amendment No. 3 Effective Date to and including the last day of the month in which the Amendment No. 3 Effective Date occurs shall be the amount for Tier 1 set forth above.

"Assignment and Acceptance" shall mean an Assignment and Acceptance substantially in the form of Exhibit A attached hereto (with blanks appropriately completed) delivered to Agent in connection with an assignment of a Lender's interest hereunder in accordance with the provisions of Section 13.7 hereof.

"Authorized Person" shall mean any individual identified by Administrative Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable ~~EEA~~ Resolution Authority in respect of any liability of an ~~EEA~~Affected Financial Institution.

"Bail-In Legislation" shall mean, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part 1 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).

"Bank Product Provider" shall mean Agent, any Lender, any Affiliate of any Lender or any other financial institution (in the case of any such other financial institution, to the extent approved by Agent, which approval shall not be unreasonably withheld or delayed) that provides any Bank Products to Borrowers or Guarantors.

"Bank Products" shall mean any one or more of the following types of services or facilities provided to a Loan Party by a Bank Product Provider: (a) credit cards, stored value cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")) and debit cards, or (b) cash management or related services, including (i) the automated clearinghouse transfer of funds for the account of a Loan Party pursuant to agreement or overdraft for any accounts of Loan Parties maintained by such Bank Product Provider that are subject to the control of Agent pursuant to any Deposit Account Control Agreement, and (ii) controlled disbursement services and (iii) Hedge Agreements if and to the extent permitted hereunder; provided, however, that none of the foregoing shall constitute a Bank Product hereunder and under the other Financing Agreements if such services or facilities constitutes a Secured Cash Management Agreement (as defined in the Term Loan Agreement) or Secured Hedging Agreement (as defined in the Term Loan Agreement) for purposes of the Term Loan Documents.

"Base Rate" shall mean the greatest of (a) the Federal Funds Rate *plus* ½%, (b) the Adjusted Eurodollar Rate (which rate shall be calculated based upon an Interest Period of one month and shall be determined on a daily basis), *plus* one percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo Bank at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo Bank's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo Bank may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).

"Base Rate Loans" shall mean any Loans or portion thereof on which interest is payable based on the Base Rate in accordance with the terms thereof. Any reference to Prime Rate Loans in any Financing Agreement shall be deemed to be Base Rate Loans.

"Beneficial Ownership Certification" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" shall mean 31 C.F.R. § 1010.230.

"Blocked Accounts" shall have the meaning set forth in Section 6.3 hereof.

"Borrower Materials" shall have the meaning set forth in Section 13.5(f) hereof.

"Borrowing Base" shall mean, at any time, the amount equal to:

(a) the amount equal to:

(i) eighty five (85%) percent of Eligible Accounts, plus

(ii) ninety (90%) percent of Eligible Credit Card Receivables, plus

(iii) the least of (A) the Fuel Inventory Loan Limit, (B) ninety (90%) percent multiplied by the Value of Eligible Inventory consisting of gasoline and diesel fuel, and (C) ninety (90%) percent of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory, plus

(iv) the lesser of (A) sixty five (65%) percent multiplied by the Value of Eligible Inventory (other than Eligible Inventory consisting of gasoline or diesel fuel) or (B) eighty five (85%) percent of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory, plus

(v) one hundred (100%) percent of Eligible Cash Collateral, minus

(b) Reserves.

The amounts of Eligible Inventory of any Borrower shall, at Agent's option, be determined based on the lesser of the amount of Inventory set forth in the general ledger of such Borrower or the perpetual inventory records maintained by such Borrower.

"Borrowing Base Certificate" shall mean a certificate substantially in the form of Exhibit D hereto, as such form may from time to time be modified by Agent to reflect the components of and reserves against the Borrowing Base as provided for hereunder from time to time, which is duly completed (including all schedules thereto) and executed, authenticated or deemed to be executed by an authorized officer of Administrative Borrower and delivered to Agent.

"Business Day" shall mean any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of Illinois, the State of New York, or the State of North Carolina, and a day on which Agent is open for the transaction of business, except that if a determination of a Business Day shall relate to any Eurodollar Rate Loans, the term Business Day shall also exclude any day on which banks are closed for dealings in dollar deposits in the London interbank market or other applicable Eurodollar Rate market.

"Capital Expenditures" shall mean, for any period, as to any Person and its Subsidiaries, all expenditures (without duplication) by such Person and its Subsidiaries for, or contracts for expenditures (other than contracts for such expenditures where payments for such expenditures are to be made in any subsequent period) for, any fixed or capital assets or improvements, or for replacements, substitutions or additions thereto, which have a useful life of more than one year (1) year, including (without duplication), but not limited to, the direct or indirect acquisition of such assets by way of offset items or otherwise and obligations under Capital Leases incurred in respect of such fixed or capital assets during such period.

"Capital Leases" shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP (as in effect on the date hereof but subject to the provisions contained in the definition of "GAAP" contained herein), is required to be reflected as a liability on the balance sheet of such Person, excluding each lease listed on Schedule 1.18 hereto.

"Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock or other interests).

"Cash Dominion Period" shall mean a period either (a) commencing on the date that an Event of Default shall have occurred and ending on the date thereafter that such Event of Default shall cease to be continuing or (b) commencing on the date that Excess Availability shall have fallen below the amount equal to twelve and one-half (12.5%) percent of the Maximum Credit for four (4) consecutive days and ending on the date thereafter that Excess Availability has been greater than the amount equal to twelve and one-half (12.5%) percent of the Maximum Credit for thirty (30) consecutive days.

"Cash Equivalents" shall mean, at any time, (a) any evidence of Indebtedness with a maturity date of ninety (90) days or less from the date of acquisition issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers' acceptances with a maturity of ninety (90) days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $1,000,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of ninety (90) days or less issued by a corporation (except an Affiliate of any Loan Party) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody's Investors Service, Inc.; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution having combined capital and surplus and undivided profits of not less than $1,000,000,000; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within ninety (90) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (e) above.

~~"Change~~"Change ~~of Control" shall mean, except as permitted under Section 9.7 hereof, (a) the acquisition by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act) of beneficial ownership, directly or indirectly, of nine and eight tenths (9.8%) percent or more of the voting power of the total outstanding Voting Stock of Parent; (b) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Parent (together with any new directors whose nomination for election by the stockholders of Parent was approved by a vote of at least a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of Parent then still in office; (c) the failure of Parent to directly own and control one hundred (100%) percent of the voting power of the total outstanding Voting Stock of Holding; or (d) the failure of Parent to directly or indirectly own and control one hundred (100%) percent of the voting power of the total outstanding Voting Stock of TA Operating, TA Nevada, TA Franchise or Petro Franchise.~~ in Law" shall mean the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" shall mean, except as permitted under Section 9.7 hereof, (a) the acquisition by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act) of beneficial ownership, directly or indirectly, of nine and eight tenths (9.8%) percent or more of the voting power of the total outstanding Voting Stock of Parent; (b) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Parent (together with any new directors whose nomination for election by the stockholders of Parent was approved by a vote of at least a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of Parent then still in office; (c) the failure of Parent to directly or indirectly own and control one hundred (100%) percent of the voting power of the total outstanding Voting Stock of each of the other Loan Parties, or (d) any "Change of Control" (or similar event) under the Term Loan Documents.

"Code" shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

"Collateral" shall have the meaning set forth in Section 5 hereof.

"Collateral Access Agreement" shall mean an agreement in writing, in form and substance reasonably satisfactory to Agent, from any lessor of premises to any Loan Party, or any other person to whom any Collateral is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, in favor of Agent with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, consignee or other person pursuant to which (among other things) such lessor or other person shall (i) acknowledge Agent's security interest in the Collateral, (ii) release or subordinate any Liens upon the Collateral held by such person or located on such premises, and (iii) agree to furnish Agent with certain access to the Collateral in such person's possession or on the premises; provided, that, the Term Loan Agent or any collateral agent or trustee for the lenders or holders of any other Indebtedness permitted by Section 9.9(h) may be a party to any Collateral Access Agreement.

"Commercial Letter of Credit" shall mean any Letter of Credit Accommodation issued for the purpose of providing the primary manner of payment for the purchase price of goods or services by a Loan Party in the ordinary course of the business of such Loan Party.

"Commitment" shall mean, at any time, as to each Lender, the principal amount set forth opposite such Lender's name on Schedule 1 hereto or on Schedule 1 to the Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.7 hereof, as the same may be adjusted from time to time in accordance with the terms hereof; sometimes being collectively referred to herein as "Commitments".

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" shall have the meaning set forth in Section 9.6(a) hereof.

"Compliance Period" shall mean the period commencing on the date on which Excess Availability has fallen below an amount equal to ten (10%) percent of the Maximum Credit and ending on a subsequent date on which Excess Availability has been greater than an amount equal to ten (10%) percent of the Maximum Credit on each day for thirty (30) consecutive days.

"Consolidated Net Income" shall mean, with respect to any Person for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries, on a consolidated basis, for such period, as determined in accordance with GAAP; provided, that, (a) the net income of any entity that is not a Subsidiary of such Person or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid or payable by such entity to such Person or a Subsidiary of such Person; (b) except to the extent included pursuant to the foregoing clause, the net income of any entity accrued prior to the date it becomes a Subsidiary of such Person or is merged into or consolidated with such Person or any of its Subsidiaries or such entity's assets are acquired by such Person or by any of its Subsidiaries shall be excluded; and (c) the net income (if positive) of any Subsidiary (other than a Borrower or Obligor) to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to such Person or to any other wholly-owned Subsidiary of such Person is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary shall be excluded. For the purposes of this definition, net income excludes (1) any extraordinary and/or one time or unusual and non-recurring gains or any non-cash losses, together with any related Provision for Taxes for such gains or non-cash losses (including, without limitation, any such gains or non-cash losses, together with any related Provision for Taxes, realized upon the sale or other disposition of any assets that are not sold in the ordinary course of business (including, without limitation, dispositions pursuant to sale and leaseback transactions) or of any Capital Stock of such Person or a Subsidiary of such Person), and (2) any income realized or loss incurred as a result of changes in accounting principles or the application thereof to such Person, together with any related Provision for Taxes.

"Consolidated Rental Expense" shall mean, with respect to any Person for any period, the aggregate amount of all real property rental expense of such Person and its Subsidiaries, on a consolidated basis, as determined in accordance with GAAP.

"Credit Card Acknowledgments" shall mean, collectively, the agreements by Credit Card Issuers or Credit Card Processors who are parties to Credit Card Agreements in favor of Agent acknowledging Agent's first priority security interest, for and on behalf of Lenders, in the monies due and to become due to a Loan Party (including, without limitation, credits and reserves) under the Credit Card Agreements, and agreeing to transfer all such amounts to the Blocked Accounts, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced; sometimes being referred to herein individually as a "Credit Card Acknowledgement".

"Credit Card Agreements" shall mean all agreements now or hereafter entered into by any Loan Party for the benefit of any Loan Party, in each case with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, including, but not limited to, the agreements set forth on Schedule 8.16 hereto.

"Credit Card Issuer" shall mean any person (other than a Loan Party) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through Comdata Network, Inc., EFS Transportation Services, Inc., American Express Travel Related Services Company, Inc., Discover Financial Services, Inc., and Fleet One Holdings, LLC.

"Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Loan Party's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

"Credit Card Receivables" shall mean, collectively, (a) all present and future rights of any Loan Party to payment from any Credit Card Issuer or Credit Card Processor arising from the sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (b) all present and future rights of any Loan Party to payment from any Credit Card Issuer or Credit Card Processor in connection with the sale or transfer of Accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under the Credit Card Agreements or otherwise.

"Credit Facility" shall mean the Loans and Letters of Credit provided to or for the benefit of any Borrower pursuant to Sections 2.1 and 2.2 hereof.

"C-Store Purchase Agreement" shall mean the Asset Purchase Agreement, dated as of September 1, 2018, by and among TA Operating, Parent, EG Retail (America), LLC and EG Group Limited, as amended, supplemented or otherwise modified in accordance with Section 9.7(b)(xiv) hereof.

"C-Store Purchased Assets" shall mean the "Assets" as defined in, and sold pursuant to, the C-Store Purchase Agreement.

"Debt Incurrence Ratio" shall mean, as to any Person, with respect to any period, the ratio of (a) EBITDAR of such Person for such Period, to (b) the Fixed Charges of such Person for such period.

"Default" shall mean an act, condition or event which with notice or passage of time or both would constitute an Event of Default.

"Defaulting Lender" shall mean any Lender that (a) has failed to fund any amounts required to be funded by it under this Agreement within one (1) Business Day of the date that it is required to do so under this Agreement (including the failure to make available to Agent amounts required on the last day of any Settlement Period pursuant to Section 6.10(b) hereof), (b) has notified the Borrowers, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under this Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement, (d) failed, within one (1) Business Day after written request by Agent or Administrative Borrower (with a copy to Agent), to confirm that it will comply with the terms of this Agreement relating to its obligations to fund any amounts required to be funded by it under this Agreement, (e) otherwise has failed to pay over to Agent or any other Lender any other amount required to be paid by it under the Agreement on the date that it is required to do so under this Agreement, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent, (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, or (iii) become the subject of a Bail-in Action.

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

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

"Deposit Account Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Agent, by and among Agent, the Loan Party with a deposit account at any bank and the bank at which such deposit account is at any time maintained; provided, that, the Term Loan Agent or any collateral agent or trustee for the lenders or holders of any other Indebtedness permitted by Section 9.9(h) may be a party to any Deposit Account Control Agreement.

"Discharge of Term Loan Debt" shall have the meaning set forth in the Intercreditor Agreement.

"Dispositions" shall have the meaning set forth in Section 9.7(b) hereof.

"Disqualified Capital Stock" shall mean any Capital Stock if any Loan Party shall be required by its terms, or upon the happening of any event or condition: (a) to pay any cash dividends or cash distributions in respect of such Capital Stock (unless such payment is at the sole option of any Loan Party or as otherwise permitted under clause (b) below) or (b) to purchase or redeem such Capital Stock or make any payment in respect of such Capital Stock (unless such purchase or redemption is at the sole option of any Loan Party) (other than solely for Capital Stock that does not constitute Disqualified Capital Stock and cash in lieu of fractional shares of such Capital Stock), in each case on or prior to the date 91 days after the Maturity Date and except as otherwise permitted by Section 9.11 hereof; provided, that Capital Stock that would not constitute Disqualified Capital Stock but for terms thereof giving holders thereof the customary right to require such Person to redeem or purchase such Capital Stock upon the occurrence of a "change of control" shall not constitute Disqualified Capital Stock.

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

"Drawing Document" shall mean any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit, including by electronic transmission such as SWIFT, electronic mail, facsimile or computer generated communication.

"EBITDA" shall mean, as to any Person, with respect to any period, an amount equal to (without duplication): (a) the Consolidated Net Income of such Person and its Subsidiaries for such period, plus (b) the sum of the following (in each case to the extent deducted in the computation of Consolidated Net Income of such Income): (i) depreciation, amortization and other non-cash charges (including, but not limited to, imputed interest, compensation expenses settled in Capital Stock of such Person, and deferred compensation) for such period, all in accordance with GAAP, plus (ii) Interest Expense for such period, plus (iii) the Provision for Taxes for such period, plus (iv) restructuring charges for severance, retention, relocation and similar employee payments incurred during such period, plus (v) non-recurring costs and expenses incurred during such period in connection with the issuance, extinguishment ~~or~~, defeasance or amendment or waiver of Indebtedness of such Person (including costs and expenses incurred in connection with the incurrence of Term Loans, the consummation of the amendment and restatement of the Existing Credit Agreement and this Agreement, and all transactions related thereto, including, without limitation, the payment of fees and expenses in connection therewith and herewith), plus (vi) extraordinary items of such Person during such period, plus (vii) the cumulative effects of a change in accounting principles of such Person during such period, plus (viii) any loss from discontinued operations of such Person during such period, plus (ix) other non-recurring charges incurred by such Person during such period (in the case of extraordinary items described in clause (b)(vi) and non-recurring charges described in clause (b)(ix) in excess of $100,000 for such period, to the extent approved by Agent in writing), minus (c) any income from discontinued operations of such Person during such period (to the extent included in the computation of Consolidated Net Income of such Person); provided, that, with respect to each of the amounts described in clauses (b)(iv), (b)(v), (b)(vi), (b)(viii) and (b)(ix), if requested by Agent, Agent shall have received calculations and supporting information relating thereto.

"EBITDAR" shall mean, as to any Person, with respect to any period, an amount equal to (without duplication): (a) the EBITDA of such Person and its Subsidiaries for such period, plus (b) Consolidated Rental Expense for such period (to the extent deducted in the computation of Consolidated Net Income of such Person).

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

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Accounts" shall mean Accounts (other than Credit Card Receivables) created by a Borrower which satisfy the criteria set forth below:

(a) such Accounts arise from the actual and bona fide sale and delivery of goods by such Borrower or rendition of services by such Borrower in the ordinary course of its business;

(b) such Accounts are not unpaid more than ~~thirty~~ one hundred twenty (120) days after the date of the original invoice for them or more than sixty (60) days of the original due date for them;

(c) such Accounts comply with the terms and conditions contained in Section 7.2 of this Agreement;

(d) such Accounts do not arise from sales on consignment, guaranteed sale, sale and return, sale on approval, or other terms under which payment by the account debtor may be conditional or contingent;

(e) the chief executive office of the account debtor with respect to such Accounts is located in the United States of America or, at Agent's option, if the chief executive office and principal place of business of the account debtor with respect to such Accounts is located other than in the United States of America, then if the account debtor has delivered to such Borrower an irrevocable letter of credit issued or confirmed by a bank reasonably satisfactory to Agent and payable only in the United States of America and in U.S. dollars, sufficient to cover such Account, in form and substance reasonably satisfactory to Agent and if required by Agent, the original of such letter of credit has been delivered to Agent or Agent's agent and the issuer thereof, and such Borrower has complied with the terms of Section 5.3(f) hereof with respect to the assignment of the proceeds of such letter of credit to Agent or naming Agent as transferee beneficiary thereunder, as Agent may specify;

(f) such Accounts do not consist of progress billings (such that the obligation of the account debtors with respect to such Accounts is conditioned upon such Borrower's satisfactory completion of any further performance under the agreement giving rise thereto), bill and hold invoices or retainage invoices, except as to bill and hold invoices, if Agent shall have received an agreement in writing from the account debtor, in form and substance reasonably satisfactory to Agent, confirming the unconditional obligation of the account debtor to take the goods related thereto and pay such invoice;

(g) the account debtor with respect to such Accounts has not asserted a counterclaim, defense or dispute and is not owed or does not claim to be owed any amounts that may give rise to any right of setoff or recoupment against such Accounts (but the portion of the Accounts of such account debtor in excess of the amount at any time and from time to time owed by such Borrower to such account debtor or claimed owed by such account debtor may be deemed Eligible Accounts);

(h) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Accounts in any material respect or reduce the amount payable or delay payment thereunder;

(i) such Accounts are subject to the first priority, valid and perfected security interest of Agent and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any liens except those permitted under Sections 9.8(a), (b), (i) and (~~i~~l) hereof;

(j) neither the account debtor nor any officer or employee of the account debtor with respect to such Accounts is an officer, employee, agent or other Affiliate of any Loan Party;

(k) the account debtors with respect to such Accounts are not any foreign government, the United States of America, any State, political subdivision, department, agency or instrumentality thereof, unless, if the account debtor is the United States of America, any State, political subdivision, department, agency or instrumentality thereof, upon Agent's request, the Federal Assignment of Claims Act of 1940, as amended or any similar State or local law, if applicable, has been complied with in a manner satisfactory to Agent;

(l) there are no proceedings or actions known to Agent or any Borrower which are threatened or pending against the account debtors with respect to such Accounts which could reasonably be expected to result in any material adverse change in any such account debtor's financial condition (including, without limitation, any bankruptcy, dissolution, liquidation, reorganization or similar proceeding);

(m) the aggregate amount of such Accounts owing by a single account debtor do not constitute more than ten (10%) percent of the aggregate amount of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of such percentage may be deemed Eligible Accounts);

(n) such Accounts are not owed by an account debtor who has Accounts unpaid more than thirty (30) (or, solely in the case of Accounts arising from goods sold or services rendered by a Borrower's repair shop, sixty (60)) days after the original invoice date for them which constitute more than fifty (50%) percent of the total Accounts of such account debtor;

(o) the account debtor is not located in a state requiring the filing of a Notice of Business Activities Report or similar report in order to permit such Borrower to seek judicial enforcement in such State of payment of such Account, unless such Borrower has qualified to do business in such state or has filed a Notice of Business Activities Report or equivalent report for the then current year or such failure to file and inability to seek judicial enforcement is capable of being remedied without any material delay or material cost;

(p) the sale of goods or the rendition of services giving rise to such Account is not supported by a performance bond unless the issuer of such bond shall have waived in writing any rights or interest in and to all Collateral, in form and substance reasonably satisfactory to Agent;

(q) such Accounts have been billed and invoiced to the account debtor with respect thereto, except to the extent that the amount of Accounts which have not been so billed and invoiced do not exceed twenty five (25%) percent of the Maximum Credit at any time; provided, that, any such Account shall cease to be Eligible Accounts unless such Account shall have been billed and invoiced within seven (7) Business Days after the date such Account is created;

(r) such Accounts are owed by account debtors deemed creditworthy at all times by Agent in its Permitted Discretion (such that in the determination of Agent in its Permitted Discretion, such an account debtor does not have, or could reasonably be expected not to have, the financial ability to satisfy its outstanding Accounts); and

(s) the account debtor with respect to such Accounts is not a Sanctioned Person or Sanctioned Entity.

The criteria for Eligible Accounts set forth above may only be changed and any new criteria for Eligible Accounts may only be established by Agent in its Permitted Discretion upon not less than two (2) Business Days' prior written notice to Administrative Borrower (during which period Agent shall be available to discuss any such proposed change or new criteria with Administrative Borrower and Borrowers may take such action as may be required so that the event, condition or circumstance that is the basis for such change or new criteria no longer exists, in a manner and to the extent reasonably satisfactory to Agent) and shall be based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Agent has no written notice thereof from a Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Accounts in any material respect in the good faith determination of Agent.

"Eligible Cash Collateral" shall mean the cash or Cash Equivalents (in each case denominated in United States Dollars) of a Borrower which are (a) maintained in a deposit account (other than a Blocked Account) or securities account, or any combination thereof, at Wells Fargo Bank or one of its Affiliates, (b) pledged by such Borrower to Agent pursuant to an agreement in form and substance reasonably satisfactory to Agent, (c) subject to the first priority, valid and perfected security interest and pledge in favor of Agent, (d) free and clear of any other lien, security interest, claim or other encumbrance or restriction (except (i) liens in favor of Agent ~~and~~, (ii) liens in favor of Wells Fargo Bank or its Affiliates to the extent such liens are permitted hereunder and (iii) liens permitted under Section 9.8(l) hereof), (e) subject to a Deposit Account Control Agreement or Investment Property Control Agreement, in form and substance reasonably satisfactory to Agent, by and among Wells Fargo Bank (or its Affiliate), such Borrower and Agent and duly authorized, executed and delivered by Wells Fargo Bank (or its Affiliate) and such Borrower (it being understood that any such Deposit Account Control Agreement or Investment Property Control Agreement shall prohibit such Borrower from making withdrawals of, or otherwise giving deposit instructions with respect to, such cash or Cash Equivalents without the prior written consent of Agent), and (f) available to such Borrower without condition or restriction except those arising pursuant to the pledge in favor of Agent.

"Eligible Credit Card Receivables" shall mean, as to each Borrower, Credit Card Receivables of and owing to such Borrower which satisfy the criteria set forth below:

(a) such Credit Card Receivables arise from the actual and bona fide sale and delivery of goods or rendition of services by such Borrower in the ordinary course of the business of such Borrower (including Credit Card Receivables which arise from any sale made by any restaurant owned and operated by a Borrower);

(b) [Reserved];

(c) such Credit Card Receivables are not unpaid more than five (5) Business Days (or, (i) solely in the case of Credit Card Receivables arising from the use of a card issued by Comdata Network, Inc., six (6) Business Days and (ii) solely in the case of Credit Card Receivables arising from the use of a card issued by FleetOne Holdings, LLC, twelve (12) Business Days) after the date of the sale of Inventory or rendition of services giving rise to such Credit Card Receivables;

(d) all material procedures required by the Credit Card Issuer or the Credit Card Processor of the credit card or debit card used in the purchase which gave rise to such Credit Card Receivables shall have been followed by such Borrower and all documents required for the authorization and approval by such Credit Card Issuer or Credit Card Processor shall have been obtained in connection with the sale giving rise to such Credit Card Receivables;

(e) the required authorization and approval by such Credit Card Issuer or Credit Card Processor shall have been obtained for the sale giving rise to such Credit Card Receivables;

(f) such Borrower shall have submitted all materials required by the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivables in order for such Borrower to be entitled to payment in respect thereof;

(g) the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivable has not failed to remit any monthly payment in respect of such Credit Card Receivable;

(h) such Credit Card Receivables comply with the applicable terms and conditions contained in Section 7.2 of this Agreement;

(i) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables has not asserted a counterclaim, defense or dispute and does not have, and does not engage in transactions which may give rise to, any right of setoff against such Credit Card Receivables (other than setoffs for fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with such Borrower as of the date hereof or as such practices may change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstance of such Borrower), but the portion of the Credit Card Receivables owing by such Credit Card Issuer or Credit Card Processor in excess of the amount owing by such Borrower to such Credit Card Issuer or Credit Card Processor pursuant to such fees, chargebacks, setoffs and deductions may be deemed Eligible Credit Card Receivables;

(j) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables has not setoff against amounts otherwise payable by such Credit Card Issuer or Credit Card Processor to such Borrower for the purpose of establishing a reserve or collateral for obligations of such Borrower to such Credit Card Issuer or Credit Card Processor (notwithstanding the foregoing the Credit Card Issuer or Credit Card Processor may have setoffs for fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with such Borrower as of the date hereof or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of such Borrower) but the portion of the Credit Card Receivables owing by such Credit Card Issuer or Credit Card Processor in excess of such setoff, reserve or collateral may be deemed Eligible Credit Card Receivables;

(k) there are no facts, events or occurrences which would impair the validity, enforceability or collectability of such Credit Card Receivables in any material respect or reduce the amount payable or delay payment thereunder (other than for setoffs for fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with such Borrower as of the date hereof or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of such Borrower);

(l) such Credit Card Receivables are subject to the first priority, valid and perfected security interest and lien of Agent, for and on behalf of itself and Lenders, and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any security interest or lien in favor of any person other than Agent except as otherwise permitted in this Agreement, in each case subject to and in accordance with the terms and conditions applicable hereunder to any such permitted security interest or lien;

(m) there are no proceedings or actions known to Agent or any Borrower which are pending or threatened against the Credit Card Issuers or Credit Card Processors with respect to such Credit Card Receivables which could reasonably be expected to result in any material adverse change in the financial condition of any such Credit Card Issuer or Credit Card Processor;

(n) such Credit Card Receivables are owed by Credit Card Issuers or Credit Card Processor deemed creditworthy by Agent in its Permitted Discretion (such that in the Permitted Discretion of Agent, such Credit Card Issuer or Credit Card Processor does not have, or could reasonably be expected not to have, the financial ability to satisfy its outstanding Accounts);

(o) no event of default has occurred and is continuing under the Credit Card Agreement of such Borrower with the Credit Card Issuer or Credit Card Processor who has issued the credit card or debit card or handles payments under the credit card or debit card used in the sale which gave rise to such Credit Card Receivables which event of default gives such Credit Card Issuer or Credit Card Processor the right to cease or suspend payment to such Borrower and no event shall have occurred which gives such Credit Card Issuer or Credit Card Processor the right to setoff against amounts otherwise payable to such Borrower, including on behalf of a Guarantor (other than for then current fees and chargebacks consistent with the current practices of such Credit Card Issuer or Credit Card Processor as of the date hereof or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of such Borrower or any Guarantor), except as may have been waived in writing on terms and conditions reasonably satisfactory to Agent pursuant to the Credit Card Acknowledgement by such Credit Card Issuer or Credit Card Processor~~)~~, or the right to establish reserves or establish or demand collateral, and the Credit Card Issuer or Credit Card Processor has not sent any written notice of default and/or notice of its intention to cease or suspend payments to such Borrower in respect of such Credit Card Receivables or to establish reserves or cash collateral for obligations of such Borrower to such Credit Card Issuer or Credit Card Processor, and such Credit Card Agreements are otherwise in full force and effect and constitute the legal, valid, binding and enforceable obligations of the parties thereto, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar law limiting creditors' rights generally and by general equitable principles;

(p) Agent shall have received, in form and substance satisfactory to Agent in its Permitted Discretion, a Credit Card Acknowledgment duly authorized, executed and delivered by the Credit Card Issuer (except as Agent may otherwise agree) or Credit Card Processor for the credit card or debit card used in the sale which gave rise to such Credit Card Receivable (except as Agent may otherwise agree), such Credit Card Acknowledgment shall be in full force and effect and the Credit Card Issuer or Credit Card Processor party thereto shall be in compliance with the terms thereof;

(q) the terms of the sale giving rise to such Credit Card Receivables and all practices of such Borrower with respect to such Credit Card Receivables comply in all material respects with applicable Federal, State, and local laws and regulations; and

(r) the customer using the credit card or debit card giving rise to such Credit Card Receivable shall not have returned the merchandise purchased giving rise to such Credit Card Receivable.

Credit Card Receivables which would otherwise constitute Eligible Credit Card Receivables pursuant to this Section will not be deemed ineligible solely by virtue of the Credit Card Agreements with respect thereto having been entered into by any Guarantor, for the benefit of Borrowers. The criteria for Eligible Credit Card Receivables may only be changed and any new criteria for Eligible Credit Card Receivables may only be established by Agent in its Permitted Discretion upon not less than two (2) Business Days' prior written notice to Administrative Borrower (during which period Agent shall be available to discuss any such proposed change or new criteria with Administrative Borrower and Borrowers may take such action as may be required so that the event, condition or circumstance that is the basis for such change or new criteria no longer exists, in a manner and to the extent reasonably satisfactory to Agent) and shall be based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) existing on the date hereof to the extent Agent has no written notice thereof from a Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Credit Card Receivables in any material respect in the good faith determination of Agent.

"Eligible Inventory" shall mean, as to each Borrower, Inventory of such Borrower consisting of finished goods (including gasoline and diesel fuel) held for resale in the ordinary course of the business of such Borrower that satisfy the criteria set forth below. Eligible Inventory shall not include (a) any Inventory sold or intended to be sold by any restaurant owned or operated by any Loan Party; (b) components which are not part of finished goods; (c) spare parts for equipment; (d) packaging and shipping materials; (e) supplies used or consumed in such Borrower's business; (f) Inventory at premises other than those owned or leased and controlled by any Loan Party, except any Inventory which would otherwise be deemed Eligible Inventory that is not located at premises owned or leased and controlled by any Loan Party may nevertheless be considered Eligible Inventory as to locations which are not owned or leased and controlled by a Loan Party, if either Agent shall have received a Collateral Access Agreement from the owner and/or lessor of such location, duly authorized, executed and delivered by such owner and lessor or Agent shall have established such Reserves in respect of amounts at any time payable by any Borrower or its affiliates to the owner and lessor thereof as Agent shall determine in its Permitted Discretion; (g) Inventory subject to a security interest or lien in favor of any Person other than Agent and those permitted by Sections 9.8(b), 9.8(c) ~~and~~ , 9.8(i) and 9.8(l) hereof; (h) bill and hold goods; (i) unserviceable, obsolete or slow moving Inventory; (j) Inventory that is not subject to the first priority, valid and perfected security interest of Agent; (k) returned, damaged and/or defective Inventory; (l) Inventory purchased or sold on consignment; (m) Inventory located outside the United States of America; (n) Inventory which is subject to or uses a trademark or other Intellectual Property licensed by a third party to a Borrower unless either (i) Agent shall have received an agreement, in form and substance reasonably satisfactory to Agent, from such third party licensor in favor of Agent, duly authorized, executed and delivered by such Borrower and such third party licensor or (ii) Agent shall have otherwise determined that Agent has the right to sell such Inventory; and (o) Inventory (excluding truck and auto service Inventory) which is not tracked on a perpetual reporting system reasonably satisfactory to Agent. The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Agent in its Permitted Discretion upon not less than two (2) Business Days' prior written notice to Administrative Borrower (during which period Agent shall be available to discuss any such proposed change or new criteria with Administrative Borrower and Borrowers may take such action as may be required so that the event, condition or circumstance that is the basis for such change or new criteria no longer exists, in a manner and to the extent reasonably satisfactory to Agent) and shall be based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Agent has no written notice thereof from a Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Inventory in any material respect in the good faith determination of Agent.

"Eligible Transferee" shall mean (a) any Lender; (b) the parent company of any Lender and/or any Affiliate of such Lender which is at least fifty (50%) percent owned by such Lender or its parent company; (c) any person (whether a corporation, partnership, trust or otherwise) that is engaged in the business of making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor, and in each case is approved by Agent; and (d) any other commercial bank, financial institution or "accredited investor" (as defined in Regulation D under the Securities Act of 1933) approved by Agent (which approval shall not be unreasonably withheld or delayed), provided, that, (i) in the case of any assignment to an Eligible Transferee described under clauses (c) and (d) above, Administrative Borrower shall have the right to approve the assignee under such assignment, such approval not to be unreasonably withheld, conditioned or delayed by Administrative Borrower, except, that, Administrative Borrower's approval shall not be required (A) after the occurrence and during the continuance of an Event of Default, or (B) in connection with an assignment by Lender upon the merger, consolidation, sale of such Lender or other disposition of all or any portion of any Lender's business, loan portfolio or other assets, (ii) neither any Loan Party nor any Affiliate of any Loan Party shall qualify as an Eligible Transferee, (iii) no natural person shall qualify as an Eligible Transferee, (iv) no Defaulting Lender shall qualify as an Eligible Transferee, and (v) no Person to whom any Indebtedness which is in any way subordinated in right of payment to any other Indebtedness of any Loan Party shall qualify as an Eligible Transferee, except as Agent may otherwise specifically agree.

"Environmental Laws" shall mean all foreign, Federal, State and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between any Loan Party and any Governmental Authority, (a) relating to pollution and the protection, preservation or restoration of the environment (including air, water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, (b) relating to the exposure to, or the use, storage, recycling, treatment, generation, manufacture, processing, distribution, transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (c) relating to all laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials. The term "Environmental Laws" includes (i) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act, the Federal Water Pollution Control Act of 1972, the Federal Clean Water Act, the Federal Clean Air Act, the Federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the Federal Solid Waste Disposal and the Federal Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Federal Safe Drinking Water Act of 1974, (ii) applicable state counterparts to such laws, and (iii) any common law or equitable doctrine that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

"Equipment" shall mean, as to each Loan Party, all of such Loan Party's now owned and hereafter acquired equipment, wherever located, including machinery, data processing and computer equipment (whether owned or licensed and including embedded software), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, together with all rules, regulations and interpretations thereunder or related thereto.

"ERISA Affiliate" shall mean any person required to be aggregated with any Loan Party or any of its or their respective Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan for which the Pension Benefit Guaranty Corporation notice requirement has not been waived; (b) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (d) the filing pursuant to Section 412 of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the occurrence of a "prohibited transaction" with respect to which any Loan Party or any of its or their respective Subsidiaries is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which any Loan Party or any of its or their respective Subsidiaries could otherwise be liable; (f) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization; (g) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Plan; (h) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (i) the imposition of any liability under Title IV of ERISA, other than the Pension Benefit Guaranty Corporation premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate in excess of $1,500,000 and (j) any other event or condition with respect to a Plan including any Plan subject to Title IV of ERISA maintained, or contributed to, by any ERISA Affiliate that could reasonably be expected to result in liability of any Borrower in excess of $1,500,000 (other than the funding of benefits in accordance with the terms of such Plan).

"Escrow Agent" shall mean Commonwealth Land Title Insurance Company.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurodollar Rate Loans" shall mean any Loans or portion thereof on which interest is payable based on the Adjusted Eurodollar Rate in accordance with the terms hereof.

"Event of Default" shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

"Excess Availability" shall mean the amount, as determined by Agent in accordance with this Agreement, calculated at any date, equal to: (a) the lesser of: (i) the Borrowing Base and (ii) the Maximum Credit (in each case under (i) and (ii), after giving effect to, but without duplication of, any Reserves, subject to the last sentence of the definition of Reserves), minus (b) the sum of (without duplication): (i) the principal amount of all then outstanding Revolving Loans, plus (ii) the principal amount of all then outstanding Letters of Credit.

"Exchange Act" shall mean the Securities Exchange Act of 1934, together with all rules, regulations and interpretations thereunder or related thereto.

"Excluded Assets" shall mean (a) Real Property, (b) commercial tort claims other than commercial tort claims that arise in connection with or are related to any assets which are or at any time were included in the calculation of the Borrowing Base, (c) investment property consisting of (i) Capital Stock in any Person which is (~~i~~A) not publicly listed unless such Person is a direct Subsidiary of a Loan Party~~;~~ or (~~ii~~B) an Excluded Subsidiary or (ii) so long as such Capital Stock does not secure any Indebtedness permitted under Section 9.9(h), Capital Stock issued by TA Ventures and QSL of Austintown Ohio LLC, and (d) all proceeds of the foregoing; provided, that, none of the foregoing assets shall be Excluded Assets to the extent such assets secure Indebtedness permitted under Section 9.9(h).

"Excluded Property" shall have the meaning set forth in Section 5.1 hereof.

"Excluded Subsidiary" shall mean (a) each direct or indirect Subsidiary of Parent listed on Schedule 1.61 hereto and (b) a direct or indirect Subsidiary of Parent formed or acquired after the date hereof, which is designated as an "Excluded Subsidiary" in writing by Parent to Agent after the date hereof and which is not a Loan Party or Specified Subsidiary; provided, that, none of the foregoing Subsidiaries shall constitute an Excluded Subsidiary if such Subsidiary is an obligor (or pledges any of its assets) under the Term Loan Documents.

"Excluded Swap Obligation" shall mean, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

"Existing Guarantors" shall mean~~, collectively, Holding and~~ Petro Franchise.

"Existing HPT Leases" shall mean, collectively, the following: (in each case as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced): (a) the Lease Agreement, dated as of January 31, 2007, by and among HPT TA Properties Trust ("HPT Trust"), HPT TA Properties LLC ("HPT LLC") and TA Leasing, as modified by the Letter Agreement, dated November 19, 2007, by and among HPT Trust, HPT LLC, TA Leasing, Agent and the other parties thereto, the First Amendment to Lease Agreement, dated as of May 12, 2008, among HPT Trust, HPT LLC and TA Leasing, the Deferral Agreement, dated as of August 11, 2008 (the "Deferral Agreement"), among HPT, HPT Trust, HPT LLC, HPT PSC Properties Trust ("PSC Trust"), HPT PSC Properties LLC ("PSC LLC"), Parent, TA Leasing and TA Operating (as successor by merger to Petro Stopping Centers, L.P. ("Petro")), and the Amendment Agreement, dated as of January 31, 2011 (the "Amendment Agreement"), among HPT, HPT Trust, HPT LLC, HPT PSC Trust, PSC LLC, Parent, TA Leasing and TA Operating (as successor by merger to Petro), and (b) the Lease Agreement, dated as of May 30, 2007, by and among PSC Trust, PSC LLC and TA Operating (as successor by merger to Petro), as modified by the Letter Agreement, dated November 19, 2007, by and among PSC Trust, PSC LLC, TA Operating (as successor by merger to Petro), Agent and the other parties thereto, the First Amendment to Lease Agreement, dated as of March 17, 2008, among PSC Trust, PSC Properties and TA Operating (as successor by merger to Petro), the Deferral Agreement and the Amendment Agreement.

"Existing Lenders" shall have the meaning set forth in the recitals to this Agreement.

"Existing Letters of Credit" shall have the meaning set forth in the recitals to this Agreement.

"Existing Loan Agreement" shall have the meaning set forth in the recitals to this Agreement.

"Existing Loans" shall have the meaning set forth in the recitals to this Agreement.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the Code, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" shall mean the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" shall mean, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" shall mean the second amended and restated letter agreement, dated on or about the Amendment No. ~~3~~4 Effective Date, by and among Borrowers and Agent, for the benefit of itself and Lenders, setting forth certain fees payable by Borrowers to Agent, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Financing Agreements" shall mean, collectively, this Agreement, the Guarantee Agreement, the Intercreditor Agreement and all notes, guarantees, security agreements, deposit account control agreements, investment property control agreements, intercreditor agreements and all other agreements, documents and instruments now or at any time hereafter executed and/or delivered by any Borrower or Obligor in connection with this Agreement; provided, that, the Financing Agreements shall not include Hedge Agreements.

"Fixed Charge Coverage Ratio" shall mean, as to any Person, with respect to any period, the ratio of (a) the amount equal to (i) the EBITDAR of such Person for such period, minus (ii) all Capital Expenditures of such Person during such period to the extent such Capital Expenditures are not financed with the proceeds of (A) Indebtedness permitted under Section 9.9 hereof or (B) amounts paid by any landlord to Borrowers or any of their Tested Subsidiaries pursuant to any Lease Agreement for the purpose of financing such Capital Expenditures (or reimbursing Borrowers or any of their Tested Subsidiaries for such Capital Expenditures), minus (iii) the difference (if positive) between (A) taxes in respect of income paid by such Person during such period in cash, and (B) refunds of taxes in respect of income received by such Person in cash during such period, to (b) the Fixed Charges of such Person for such period.

"Fixed Charges" shall mean, as to any Person, with respect to any period, the sum of, without duplication, (a) all Interest Expense paid in cash during such period, plus (b) all regularly scheduled principal payments paid in cash during such period in respect of (i) Indebtedness for borrowed money (other than payments in respect of Revolving Loans which do not result in a reduction of the Commitments) and (ii) Indebtedness with respect to Capital Leases (and without duplicating any items of this definition, the interest component with respect to Indebtedness under Capital Leases), plus (c) all Consolidated Rental Expense paid in cash during such period, plus (d) all dividends paid in cash by Parent during such period pursuant to Section 9.11(c) hereof.

"Foreign Subsidiary" shall mean any Subsidiary of a Loan Party which is incorporated or formed under the laws of a jurisdiction outside the United States of America.

"Freightliner Agreement" shall mean the Freightliner Express Operating Agreement, dated as of July 21, 1999, by and among Daimler Trucks North America LLC, formerly known as Freightliner Corporation, TA Operating Corporation (as predecessor in interest to TA Operating) and TA Franchise Systems, Inc. (as predecessor in interest to TA Franchise), as amended by Amendment No. 1 to Operating Agreement, dated as of November 9, 2000, Amendment No. 2 to Operating Agreement dated as of April 15, 2003, Amendment No. 3 to Operating Agreement, dated as of July 26, 2006, Amendment No. 4 to Operating Agreement, dated as of August 12, 2008, and as the same may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Fuel Inventory Loan Limit" shall mean, at any time, the amount equal to seventy-five (75%) percent of the Maximum Credit at such time.

"Funding Bank" shall have the meaning set forth in Section 3.3(a) hereof.

"GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the Accounting Standards Codification of the Financial Accounting Standards Board, the opinions and pronouncements of the American Institute of Certified Public Accountants and the Staff Accounting Bulletins and other pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied, except that, for purposes of Section 9.17 hereof or if any change in GAAP would affect the computation of the Fixed Charge Coverage Ratio and the Debt Incurrence Ratio or the Indebtedness or Lien covenant calculations, GAAP shall be determined on the basis of such principles in effect on the Amendment No. 3 Effective Date and consistent with those used in the preparation of the most recent audited financial statements delivered to Agent prior to the Amendment No. 3 Effective Date. Notwithstanding any changes in GAAP after the date of this Agreement (including the phase-in of the effectiveness of any changes to GAAP pursuant to any amendment to GAAP adopted as of the Amendment No. 3 Effective Date), any lease of the Borrowers or their Subsidiaries that would be characterized as an operating lease under GAAP in effect on the Amendment No. 3 Effective Date (without giving effect to such phase-in), whether such lease is entered into before or after the Amendment No. 3 Effective Date, shall not constitute a Capital Lease under this Agreement or any other Financing Agreement.

"Girkin" shall mean Girkin Development, LLC, a Kentucky limited liability company, and its successors and assigns, which merged with and into TA Operating LLC on May 1, 2014.

"Governmental Authority" shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guarantee Agreement" shall mean the Amended and Restated Guarantee, dated as of October 25, 2011, by and among the Loan Parties and the Agent, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced.

"Guarantor Conversion Notice" shall mean the notice from Administrative Borrower to Agent in the form attached hereto as Exhibit E.

"Hazardous Materials" shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

"Hedge Agreement" shall mean an agreement between any Borrower or Guarantor and a Bank Product Provider that is a rate swap agreement, basis swap, forward rate agreement, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing or a master agreement for any of the foregoing together with all supplements thereto) for the purpose of protecting against or managing exposure to fluctuations in interest or exchange rates, currency valuations or commodity prices; sometimes being collectively referred to herein as "Hedge Agreements"; provided, however, that in no event shall any agreement constitute a Hedge Agreement hereunder and under the other Financing Agreements if such agreement constitutes a Secured Hedging Agreement (as defined in the Term Loan Agreement) for purposes of the Term Loan Documents.

"HPT" shall mean Hospitality Properties Trust, a Maryland real estate investment trust, and its successors and assigns.

"HPT Companies" shall mean the collective reference to HPT and its Subsidiaries; provided, that, in no event shall the HPT Companies include any Loan Party or any of their respective Subsidiaries.

"Indebtedness" shall mean, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor (whether or not an Affiliate) created, incurred, assumed or guaranteed by such Person in the ordinary course of business of such Person in connection with obtaining goods, materials or services payable in accordance with customary trade practices); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefore, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; provided that, the amount of any such 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; (e) all obligations of such Person to redeem or repurchase any redeemable stock and redemption or repurchase obligations under any Disqualified Capital Stock or other equity securities issued by such Person; (f) without duplication, all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values; and (i) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP. Notwithstanding anything to the contrary contained herein, "Indebtedness" shall not include (i) obligations in respect of any lease listed on Schedule 1.18 hereto or (ii) obligations in respect of any Capital Lease to the extent such Capital Lease would have been characterized as an operating lease in accordance with GAAP (as in effect on the date hereof but subject to the provisions contained in the definition of "GAAP" herein).

"Indemnitee" shall have the meaning set forth in Section 11.5 hereof.

"Independent Director" shall have the meaning given to such term in the limited liability company agreement of Parent.

"Information Certificate" shall mean, collectively, the Information Certificates of Loan Parties in substantially the form of Exhibit B hereto containing material information with respect to Loan Parties, their respective businesses and assets provided by or on behalf of Loan Parties to Agent.

"Intellectual Property" shall mean, as to each Loan Party, such Loan Party's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or the license of any trademark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; software and contract rights relating to computer software programs, in whatever form created or maintained.

"Intercreditor Agreement" shall mean the Intercreditor Agreement, dated on or about the Amendment No. 4 Effective Date, by and among Agent, Term Loan Agent and Term Loan Administrative Agent, as acknowledged by the Loan Parties, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced.

"Interest Expense" shall mean, for any period, as to any Person, as determined in accordance with GAAP, the total interest expense of such Person and its Subsidiaries, whether paid or accrued during such period (including the interest component of Capital Leases for such period), including, without limitation, discounts in connection with the sale of any Accounts, and bank fees, commissions, discounts and other fees and charges owed with respect to letters of credit, banker's acceptances or similar instruments, but excluding interest paid in property other than cash during such period.

"Interest Period" shall mean for any Eurodollar Rate Loan, a period of approximately one (1), two (2), three (3) or six (6) months duration as any Borrower (or Administrative Borrower on behalf of such Borrower) may elect, the exact duration to be determined in accordance with the customary practice in the applicable Eurodollar Rate market; provided, that, such Borrower (or Administrative Borrower on behalf of such Borrower) may not elect an Interest Period which will end after the last day of the then-current term of this Agreement.

"Interest Rate" shall mean,

(a) Subject to clause (b) of this definition below:

(i) as to Base Rate Loans, a rate equal to the then Applicable Margin for Base Rate Loans on a per annum basis plus the Base Rate, and

(ii) as to Eurodollar Rate Loans, a rate equal to the then Applicable Margin for Eurodollar Rate Loans on a per annum basis plus the Adjusted Eurodollar Rate (in each case, based on the London ~~Interbank Offered Rate~~interbank offered rate applicable for the Interest Period as in effect two (2) Business Days prior to the commencement of such Interest Period, whether such rate is higher or lower than any rate previously selected by a Borrower).

(b) Notwithstanding anything to the contrary contained herein, Agent may, at its option, and Agent shall, at the direction of the Required Lenders, increase the Applicable Margin otherwise used to calculate the Interest Rate for Base Rate Loans and Eurodollar Rate Loans in each case to the highest percentage set forth in the definition of the term Applicable Margin for each category of Revolving Loans (without regard to the amount of Monthly Average Excess Availability) plus two (2%) percent per annum: (i) for the period (A) from and after the effective date of termination or non-renewal hereof until Agent and Lenders have received full and final payment of all outstanding and unpaid Obligations in immediately available funds and (B) from and after the date of the occurrence of an Event of Default and for so long as such Event of Default is continuing and (ii) on Revolving Loans at any time outstanding in excess of the Borrowing Base (whether or not such excess(es) arise or are made with or without the knowledge or consent of Agent or any Lender and whether made before or after an Event of Default).

"Inventory" shall mean, as to each Loan Party, all of such Loan Party's now owned and hereafter existing or acquired goods, wherever located, which (a) are leased by such Loan Party as lessor; (b) are held by such Loan Party for sale or lease or to be furnished under a contract of service; (c) are furnished by such Loan Party under a contract of service; or (d) consist of raw materials, work in process, finished goods or materials used or consumed in its business.

"Inventory Loan Limit" shall mean, at any time, the amount equal to eighty (80%) percent of the Maximum Credit at such time.

"Investments" shall have the meaning set forth in Section 9.10 hereof.

"Investment Property Control Agreement" shall mean an agreement in writing, in form and substance reasonably satisfactory to Agent, by and among Agent, any Loan Party (as the case may be) and any securities intermediary, commodity intermediary or other person who has custody, control or possession of any investment property of such Loan Party; provided, that, the Term Loan Agent or any collateral agent or trustee for the lenders or holders of any other Indebtedness permitted by Section 9.9(h) may be a party to any Investment Property Control Agreement.

"ISP" shall mean, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the Issuing Bank for use.

"Issuer Document" shall mean, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of Issuing Bank and relating to such Letter of Credit.

"Issuing Bank" shall mean Wells Fargo Bank or any Lender that is reasonably acceptable to Agent and Administrative Borrower that shall issue a Letter of Credit for the account of a Borrower and have agreed in a manner reasonably satisfactory to Agent to be subject to the terms hereof as an Issuing Bank.

"Lease Agreement" shall mean any Existing HPT Lease or any other lease agreement entered into by a Loan Party or Specified Subsidiary pursuant to which such Loan Party or Specified Subsidiary leases Real Property (and related personal property) from any other Person.

"Lender Group" shall mean each of the Lenders (including Issuing Bank) and Agent, or any one or more of them.

"Lenders" shall mean shall have the meaning set forth in the preamble to this Agreement.

"Letter of Credit" shall mean a letter of credit (as that term is defined in the UCC) issued by Issuing Bank. Any reference to a Letter of Credit Accommodation or Letter of Credit Accommodations in any Financing Agreement shall be deemed to be a Letter of Credit or Letters of Credit, respectively.

"Letter of Credit Collateralization" shall mean either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent (including that Agent has a first priority perfected Lien in such cash collateral), including provisions that specify that the Letter of Credit Fees and all commissions, fees, charges and expenses provided for in Section 2.2(k) of this Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Lenders in an amount equal to one hundred and two (102%) percent of the then existing Letter of Credit Usage plus the amount of any fees and expenses payable in connection therewith through the end of the latest expiry date of such Letters of Credit, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing Bank, terminating all of such beneficiaries' rights under the Letters of Credit, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to one hundred and two (102%) percent of the then existing Letter of Credit Usage plus the amount of any fees and expenses payable in connection therewith through the end of the latest expiry date of such Letters of Credit (it being understood that the Letter of Credit Fee and all fronting fees set forth in this Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" shall mean a payment made by Issuing Bank pursuant to a Letter of Credit.

"Letter of Credit Exposure" shall mean, as of any date of determination with respect to any Lender, such Lender's participation in the Letter of Credit Usage pursuant to Section 2.2(e) on such date.

"Letter of Credit Fee" shall have the meaning set forth in Section 3.2(b) hereof.

"Letter of Credit Indemnified Costs" shall have the meaning set forth in Section 2.2(f) hereof.

"Letter of Credit Related Person" shall have the meaning set forth in Section 2.2(f) hereof.

"Letter of Credit Sublimit" shall mean $125,000,000.

"Letter of Credit Usage" shall mean, as of any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit, plus (b) the aggregate amount of outstanding reimbursement obligations with respect to Letters of Credit which remain unreimbursed or which have not been paid through a Revolving Loan or otherwise.

"License Agreements" shall have the meaning set forth in Section 8.11 hereof.

"Liens" shall have the meaning set forth in Section 9.8 hereof.

"Loan Account" shall have the meaning set forth in Section 6.1 hereof.

"Loan Party" shall mean any Borrower or any Guarantor.

"Loans" shall mean the Revolving Loans.

~~"London Interbank Offered Rate" shall mean, with respect to any Eurodollar Rate Loan for the Interest Period applicable thereto, the rate of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBO Page (or any successor page) as the London interbank offered rate for deposits in U.S. Dollars at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period; provided, that, if more than one rate is specified on Reuters Screen LIBO Page, the applicable rate shall be the arithmetic mean of all such rates.~~

"Margin Stock" shall have the meaning defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Effect" shall mean a material adverse effect on (a) the financial condition, business, performance or operations of Loan Parties (taken as a whole); (b) the legality, validity or enforceability of this Agreement or any of the other Financing Agreements; (c) the legality, validity, enforceability, perfection or priority of the security interests and liens of Agent upon the Collateral; (d) the ability of Borrowers to repay the Obligations or of any Borrower to perform its obligations under this Agreement or any of the other Financing Agreements as and when to be performed; or (e) the ability of Agent or any Lender to enforce the Obligations or realize upon the Collateral or otherwise with respect to the rights and remedies of Agent and Lenders under this Agreement or any of the other Financing Agreements.

"Material Contract" shall mean (a) the Shared Services Agreement, (b) each of the Existing HPT Leases, (c) the Freightliner Agreement, (d) the Sublease Agreement, dated as of January 31, 2007, by and between TA Operating and TA Leasing and (e) any other contract or other agreement (other than the Financing Agreements), whether written or oral, to which any Loan Party is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect; provided that the Term Loan Documents and the documents governing any Incremental Equivalent Debt (as defined in the Term Loan Agreement) shall not constitute "Material Contracts".

"Material License Agreement" shall mean each License Agreement to which any Loan Party is a party which constitutes a Material Contract; sometimes referred to herein collectively as "Material License Agreements."

"Maturity Date" shall ~~have~~mean the ~~meaning set forth in Section 13.1 hereof~~earlier of (a) July 19, 2024 and (b) ninety (90) days prior to the earliest scheduled maturity date of any loans under the Term Loan Agreement.

"Maximum Credit" shall mean the amount of $200,000,000, as such amount may be increased in accordance with Section 2.3 hereof or decreased in accordance with Section 2.4 hereof.

"Monthly Average Excess Availability" shall mean, at any time, the daily average of the Excess Availability for the immediately preceding calendar month.

"Multiemployer Plan" shall mean a "multi-employer plan" as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by any Loan Party or any ERISA Affiliate.

"Net Recovery Percentage" shall mean the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the amount of the recovery in respect of the applicable category of Inventory at such time on a "going out of business" basis as set forth in the most recent acceptable appraisal of Inventory received by Agent in accordance with Section 7.3, net of operating expenses, liquidation expenses and commissions, and (b) the denominator of which is the applicable average cost of such aggregate amount of the Inventory subject to such appraisal.

"New Lending Office" shall have the meaning specified in Section 6.13 hereof.

"Non-Consenting Lender" shall have the meaning set forth in Section 11.3(c) hereof.

"Non-US Lender" shall have the meaning set forth in Section 6.13 hereof.

"Obligations" shall mean (a) any and all Loans, Letters of Credit and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any or all of Borrowers to Agent, any Issuing Bank or any Lender and/or any of their Affiliates, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement or any of the other Financing Agreements, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to such Borrower under the United States Bankruptcy Code or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, or secured or unsecured, and (b) for purposes of Section 5.1 hereof and the Security Provisions and subject to the priority in right of payment set forth in Section 6.4 hereof, all obligations, liabilities and indebtedness of every kind, nature and description owing by any or all of Loan Parties to Agent or any Bank Product Provider arising under or pursuant to any Bank Products, whether now existing or hereafter arising, provided, that, (i) as to any such obligations, liabilities and indebtedness arising under or pursuant to a Hedge Agreement, the same shall only be included within the Obligations if upon Agent's request, Agent shall have entered into an agreement, in form and substance reasonably satisfactory to Agent, with the Bank Product Provider that is a counterparty to such Hedge Agreement, as acknowledged and agreed to by Loan Parties, providing for the delivery to Agent by such counterparty of information with respect to the amount of such obligations and providing for the other rights of Agent and such Bank Product Provider in connection with such arrangements, (ii) any Bank Product Provider, other than Wells and its Affiliates, shall have delivered written notice to Agent that (A) such Bank Product Provider has entered into a transaction to provide Bank Products to a Loan Party and (B) the obligations arising pursuant to such Bank Products provided to Loan Parties constitute Obligations entitled to the benefits of the security interest of Agent granted hereunder, (iii) in no event shall any Bank Product Provider to whom such obligations, liabilities or indebtedness are owing be deemed a Lender for purposes hereof to the extent of and as to such obligations, liabilities or indebtedness other than for purposes of Section 5.1 hereof and other than for purposes of Sections 12.1, 12.2, 12.3(b), 12.6, 12.7, 12.9, 12.12, 13.1(a) (but solely to the extent relating to the delivery of cash collateral for Obligations arising under or in connection with any Bank Products), and 13.6 hereof, and (iv) the Obligations of any Loan Party shall exclude its Excluded Swap Obligation.

"Obligor" shall mean any Guarantor.

"OFAC" shall mean The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Other Taxes" shall have the meaning specified in Section 6.13 hereof.

"Parent" shall have the meaning set forth in the preamble to this Agreement.

"Participant" shall mean any financial institution that acquires and holds a participation in the interest of any Lender in any of the Loans and Letters of Credit in conformity with the provisions of Section 13.7 of this Agreement governing participations.

"Participant Register" shall have the meaning set forth in Section 13.7 hereof.

"Patriot Act" shall have the meaning set forth in Section 8.21 hereof.

"Perishable Inventory" shall mean Inventory consisting of dairy, frozen foods, deli, bread, sweet snacks and other perishable grocery items.

"Permits" shall have the meaning set forth in Section 8.7 hereof.

"Permitted Acquisitions" shall mean the purchase by a Loan Party (whether directly or indirectly through a Specified Subsidiary) after the date hereof of all or substantially all of the assets of any Person or a business or division of such Person (including pursuant to a merger with such Person or the formation of a wholly owned Subsidiary solely for such purpose that is merged with such Person) or of all or a majority of the Capital Stock of such Person (such assets or Person being referred to herein as the "Acquired Business") in one or a series of transactions that satisfies each of the following conditions:

(a) the Acquired Business shall be an operating company that engages in a line of business substantially similar to the business that Borrowers are engaged in on the Amendment No. 3 Effective Date or any business reasonably related or complementary to such line of business,

(b) Agent shall have received all items required by Sections 5.2 and 9.21 in connection with the Acquired Business (in each case, subject to the terms of Section 9.21(d) hereof),

(c) in the case of the acquisition of the Capital Stock of another Person, the board of directors (or other comparable governing body) of such other Person shall have duly approved such acquisition and such Person shall not have announced that it will oppose such acquisition or shall not have commenced any action which alleges that such acquisition will violate applicable law,

(d) Excess Availability shall not be less than the amount equal to seventeen and one-half (17.5%) percent of the Maximum Credit, as of the date of such acquisition and immediately after giving effect thereto,

(e) as of the date of such acquisition and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing,

(f) in the case of an acquisition of Capital Stock of another Person, such Person shall be organized under the laws of a jurisdiction within the United States except that such Person acquired pursuant to such acquisition may be organized under the laws of a jurisdiction outside the United States if (i) one or more other Persons acquired pursuant to such acquisition is organized under the laws of a jurisdiction within the United States and (ii) the book value of the assets of such Person shall not exceed ten (10%) percent of the book value of the assets of all such other Persons,

(g) in the case of an acquisition of assets or a business or division of another Person, such assets, business or division shall be located within the United States except that such assets, business or division acquired pursuant to such acquisition may be located outside the United States if (i) other assets, businesses or divisions which are acquired pursuant to such acquisition are located within the United States and (ii) the book value of such assets, business or division shall not exceed ten (10%) percent of the book value of such other assets, business or divisions,

(h) in the case of an acquisition where the consideration paid or payable is greater than $25,000,000, Agent shall have received not less than five (5) Business Days' prior written notice (or such lesser period as to which Agent may reasonably consent) of such acquisition;

(i) in the case of an acquisition of more than one travel center location, Agent shall have received a certificate of the chief financial officer or chief executive officer of Administrative Borrower certifying to Agent and Lenders as to the matters set forth above in this definition, and

(j) in the case of an acquisition of only a single travel center location, Agent shall receive, on or prior to the date on which Loan Parties are required to deliver the next succeeding Compliance Certificate pursuant to Section 9.6(a) hereof, a certificate of the chief financial officer or chief executive officer of Administrative Borrower certifying to Agent and Lender as to the matters set forth above in this definition.

"Permitted Discretion" shall mean with reference to Agent, a determination made in good faith in the exercise of its reasonable business judgment based on how an asset-based lender with similar rights providing a credit facility of the type provided hereunder would act in similar circumstances at the time with the information then available to it.

"Person" or "person" shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

"Petro Travel Plaza Operating Agreement" shall mean the Amended and Restated Limited Liability Company Operating Agreement of Petro Travel Plaza Holdings LLC, dated as of October 8, 2008, as amended by Amendment No. 1, effective as of August 19, 2009, between TA Operating and Tejon Development Corporation, as the same exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Plan" shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) which any Loan Party sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a Multiemployer Plan has made contributions at any time during the immediately preceding six (6) plan years.

"Platform" shall have the meaning set forth in Section 13.5(f) hereof.

~~"Propeo" shall mean any Guarantor formed or acquired after the date hereof which does not own, and will not own or acquire, any material assets other than Real Property and Equipment and which has been designated in writing after the date hereof as a "Propeo" by Parent to Agent.~~

"Pro Rata Share" shall mean as to any Lender, the fraction (expressed as a percentage) the numerator of which is such Lender's Commitment and the denominator of which is the aggregate amount of all of the Commitments of Lenders, as adjusted from time to time in accordance with the provisions of Section 13.7 hereof; provided, that, if the Commitments have been terminated, the numerator shall be the unpaid amount of such Lender's Loans and its interest in the Letters of Credit and the denominator shall be the aggregate amount of all unpaid Loans and Letters of Credit.

"Propco" shall mean any Guarantor formed or acquired after the date hereof which does not own, and will not own or acquire, any material assets other than Real Property and Equipment and which has been designated in writing after the date hereof as a "Propco" by Parent to Agent.

"Provision for Taxes" shall mean an amount equal to all taxes imposed on or measured by net income, whether Federal, State, Provincial, county or local, and whether foreign or domestic, that are paid or payable by any Person in respect of any period in accordance with GAAP.

"Public Lender" shall have the meaning set forth in Section 13.5(f) hereof.

"QSL Franchise" shall have the meaning set forth in the preamble to this Agreement.

"QSL Operating" shall have the meaning set forth in the preamble to this Agreement.

"QSL RE" shall have the meaning set forth in the preamble to this Agreement.

"Qualified Assumed Indebtedness" shall mean Indebtedness of a Person which becomes a Loan Party after the date hereof in connection with a Permitted Acquisition; provided, that, (a) such Indebtedness existed prior to the closing of such Permitted Acquisition and (b) such indebtedness was not created or incurred in connection with, or in anticipation of, such Permitted Acquisition.

"Qualified ECP Guarantor" shall mean, in respect of any Swap Obligations, each Loan Party that has total assets exceeding $10,000,000 at the time the 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.

"Real Property" shall mean all now owned and hereafter acquired real property of each Loan Party, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located.

"Receivables" shall mean all of the following now owned or hereafter arising or acquired property of each Loan Party: (a) all Accounts; (b) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (c) all payment intangibles of such Loan Party; (d) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to any Loan Party or otherwise in favor of or delivered to any Loan Party in connection with any Account; or (e) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to any Loan Party, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by any Loan Party or to or for the benefit of any third person (including loans or advances to any Affiliates or Subsidiaries of any Loan Party) or otherwise associated with any Accounts, Inventory or general intangibles of any Loan Party (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to any Loan Party in connection with the termination of any Plan or other employee benefit plan and any other amounts payable to any Loan Party from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which any Loan Party is a beneficiary).

"Records" shall mean, as to each Loan Party, all of such Loan Party's present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of any Loan Party with respect to the foregoing maintained with or by any other person).

"Reference Bank" shall mean Wells Fargo Bank, or such other bank as Agent may from time to time designate.

"Refinanced Revolving Loans" shall have the meaning set forth in Section 11.3(f) hereof.

"Refinancing Indebtedness" means any Indebtedness incurred or issued to refinance, replace, refund, extend, renew, defease, restructure, amend, restate or otherwise modify (collectively to "Refinance" or a "Refinancing" or "Refinanced") such other Indebtedness on or prior to its maturity so long as: (a) the principal amount of such Refinancing Indebtedness does not exceed the principal amount of the Indebtedness so Refinanced except by an amount equal to unpaid accrued interest, fees and premium (including tender premium) and penalties (if any) thereon plus upfront fees and original issue discount and other reasonable and customary fees and expenses incurred or paid in connection with such Refinancing, plus an amount equal to any existing commitment unutilized and letters of credit undrawn thereunder; (b) such Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being Refinanced; (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations arising under the Financing Agreements and was required to be subordinated when initially incurred, such Refinancing Indebtedness is subordinated in right of payment to the Obligations arising under the Financing Agreements on terms, taken as a whole, as favorable in all material respects to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced; (d) if the Indebtedness being Refinanced is secured by a security interest in the Collateral and/or subject to any intercreditor arrangements for the benefit of the Lenders and was required to be subject to such intercreditor arrangements when initially incurred, such Refinancing Indebtedness is secured and subject to intercreditor arrangements on terms, taken as a whole, as favorable in all material respects to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced or is unsecured; (e) if the Indebtedness being Refinanced is unsecured, such Refinancing Indebtedness shall be unsecured; and (f) such Refinancing Indebtedness is incurred by the person who is or would have been permitted to be the obligor or guarantor (or any successor thereto) on the Indebtedness being Refinanced.

"Register" shall have the meaning set forth in Section 13.7 hereof.

"Replacement Revolving Loans" shall have the meaning set forth in Section 11.3(f) hereof.

"Report" shall have the meaning set forth in Section 12.10(a) hereof.

"Required Lenders" shall mean, at any time, those Lenders whose Pro Rata Shares aggregate more than fifty (50%) percent of the aggregate of the Commitments of all Lenders, or if the Commitments shall have been terminated, Lenders to whom more than fifty (50%) percent of the then outstanding Obligations are owing; provided, that, if there is more than one Lender and the Pro Rata Share of any Lender is more than fifty (50%) percent, then Required Lenders shall mean such Lender plus at least one other Lender.

"Reserves" shall mean as of any date of determination, such amounts as Agent may from time to time establish and revise in its Permitted Discretion reducing the amount of Revolving Loans and Letters of Credit which would otherwise be available to any Borrower under the lending formula(s) provided for herein: (a) to reflect events, conditions, contingencies or risks which, as determined by Agent in its Permitted Discretion, adversely affect, or would have a reasonable likelihood of adversely affecting, either (i) the Collateral or any other property which is security for the Obligations, its value or the amount that might be received by Agent from the sale or other disposition or realization upon such Collateral, or (ii) the assets or business of any Borrower or Obligor or (iii) the security interests and other rights of Agent or any Lender in the Collateral (including the enforceability, perfection and priority thereof) or (b) to reflect Agent's good faith belief that any collateral report or financial information furnished by or on behalf of any Borrower or Obligor to Agent is or may have been incomplete, inaccurate or misleading in any material respect or (c) in respect of any state of facts which constitute a Default or an Event of Default. Without limiting the generality of the foregoing, Reserves may, at Agent's option, in its Permitted Discretion, be established to reflect any of the following: (i) that dilution with respect to the Accounts (based on the ratio of the aggregate amount of non-cash reductions in Accounts for any period to the aggregate dollar amount of the sales of such Borrower for such period) as calculated by Agent for any period is or is reasonably anticipated to be greater than five (5%) percent, (ii) returns, discounts, claims, vendor rebates, credits and allowances of any nature that are not paid pursuant to the reduction of Accounts, (iii) a change in the turnover, age or mix of the categories of Inventory that adversely affects the aggregate value of all Inventory, (iv) inventory shrinkage, (v) reserves in respect of markdowns and cost variances (pursuant to discrepancies between the purchase order price of Inventory and the actual cost thereof), (vi) amounts due or to become due in respect of sales, use, withholding, excise and/or similar taxes, (vii) any rental payments, service charges or other amounts to become due to lessors and operators of real property to the extent Inventory, Equipment or Records are located in or on such property or such Records are needed to monitor or otherwise deal with the Collateral (except that Agent will not establish such reserve for any property for which Agent has received a Collateral Access Agreement accepted by Agent in writing if all such payments, charges and other amounts have been paid when due), provided, that, the Reserves established pursuant to this clause (vii) as to retail store locations that are leased shall not exceed at any time the aggregate of amounts payable for the next three (3) months to the lessors of such retail store locations, provided, that, such limitation on the amount of the Reserves pursuant to this clause (vii) shall only apply so long as: (A) no Event of Default shall have occurred and be continuing, (B) neither a Loan Party nor Agent shall have received notice of any event of default under the lease with respect to such location and (C) no Loan Party has granted to the lessor a security interest or lien upon any assets of such Loan Party, (viii) amounts owing by Borrowers to Credit Card Issuers or Credit Card Processors in connection with the Credit Card Agreements, (ix) variances between the perpetual inventory records of Borrowers and the results of the test counts of Inventory conducted by Agent with respect thereto in excess of the percentage acceptable to Agent, (x) the aggregate amount of deposits, if any, received by any Borrower from its customers in respect of unfilled orders for goods, (xi) fifty (50%) percent of the aggregate amount of gift certificates, and (xii) obligations, liabilities or indebtedness (contingent or otherwise) of Loan Parties to any Bank Product Provider arising under or in connection with any Bank Products of any Loan Party with a Bank Product Provider or as such Bank Product Provider may otherwise require in connection therewith to the extent that such obligation, liabilities or indebtedness constitute Obligations as such term is defined herein or otherwise receive the benefit of the security interest of Agent in any Collateral. To the extent Agent may establish a Reserve so as to address any event, condition or other circumstance in a manner satisfactory to Agent as determined by Agent in its Permitted Discretion, Agent shall not establish a new criteria or revise criteria for Eligible Accounts, Eligible Inventory or Eligible Credit Card Receivables for the same purpose and Agent shall not make Accounts, Credit Card Receivables or Inventory ineligible based on criteria for Eligible Accounts, Eligible Credit Card Receivables or Eligible Inventory for the same purpose. The amount of any Reserve established by Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Agent in its Permitted Discretion. Agent shall give Administrative Borrower prompt written notice of any discretionary Reserve established by Agent after the date hereof. To the extent that any Reserve is in respect of amounts that may be payable to third parties, Agent may, at its option, deduct such Reserve from the Maximum Credit at any time that the Maximum Credit is less than the amount of the Borrowing Base.

"Resolution Authority" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Payment" shall mean (a) any dividend or other distribution, direct or indirect, on account of any Capital Stock of any Loan Party now or hereafter outstanding, except a dividend or other distribution payable solely in Capital Stock of identical class to the holders of that class; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Capital Stock of any Loan Party now or hereafter outstanding (including, for the avoidance of doubt, any Capital Stock of a Loan Party which is held as "treasury stock" of such Loan Party); and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Capital Stock of any Loan Party now or hereafter outstanding.

"Revolving Loans" shall mean the loans now or hereafter made by or on behalf of any Lender or by Agent for the account of any Lender on a revolving basis pursuant to the Credit Facility (involving advances, repayments and readvances) as set forth in Section 2.1 hereof.

"RMR" shall mean The RMR Group LLC, a Maryland limited liability company, and its successors and assigns.

"Sanctioned Entity" shall mean (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" shall mean, 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" shall mean 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 United States of America, 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 (~~d~~e) any other Governmental Authority with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Affiliates.

"SEC" shall mean the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Parties" shall mean, collectively, (i) Agent, (ii) Lenders, (iii) Issuing Banks, and (iv) any Bank Product Provider; provided, that, as to any Bank Product Provider, only to the extent of the Obligations owing to such Bank Product Provider; such parties are sometimes referred to herein individually as a "Secured Party".

"Security Provisions" shall mean the following provisions of the Financing Agreements (as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced): (a) Section 1(a) of the Guarantee Agreement; (b) Sections 1 and 2 of the Amended and Restated Pledge and Security Agreement, dated of even date herewith, by Parent~~, Holding~~ and TA Operating in favor of Agent; (c) Sections 1 and 2 of the Amended and Restated Trademark Collateral Assignment and Security Agreement, dated of even date herewith, by and between TA Operating and Agent; (d) Sections 1 and 2 of the Amended and Restated Copyright Collateral Assignment and Security Agreement, dated of even date herewith, by and between TA Operating and Agent; and (e) such other sections of such other Financing Agreements as Agent may from time to time designate as a "Security Provision" in a writing delivered by Agent to Administrative Borrower.

"Sellers" shall mean Frederick M. Higgins, Frederick M. Higgins Charitable Remainder Unitrust, Heather Higgins, Leslie Higgins Embry, Cathy Howard, Glenn Howard, Stacy Howard Jones, Wesley Howard, Jamie Gaddie Higgins Family Trust, Jamie Gaddie Higgins Marital Trust, Rita Barks, Danny Evans, Jerry Goff, Helen Jernigan, Martha Miller-Webb, Donna Carlyle, Betsy Monroe, Owen Monroe Trust Under Will, Carrie Leigh Porcel and their respective successors and assigns.

"Sellers' Representative" shall mean Frederick M. Higgins, in his capacity as the representative of Sellers.

"Settlement Period" shall have the meaning set forth in Section 6.10(b) hereof.

"Shared Services Agreement" shall mean the Amended and Restated Business Management and Shared Services Agreement, dated as of March 12, 2015, by and between Parent and RMR, as the same exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Solvent" shall mean, at any time with respect to any Person, that at such time such Person (a) is able to pay its debts as they mature and has (and has a reasonable basis to believe it will continue to have) sufficient capital (and not unreasonably small capital) to carry on its business consistent with its practices as of the date hereof, and (b) the assets and properties of such Person at a fair valuation (and including as assets for this purpose at a fair valuation all rights of subrogation, contribution or indemnification arising pursuant to any guarantees given by such Person) are greater than the Indebtedness of such Person, and including subordinated and contingent liabilities computed at the amount which, such person has a reasonable basis to believe, represents an amount which can reasonably be expected to become an actual or matured liability (and including as to contingent liabilities arising pursuant to any guarantee the face amount of such liability as reduced to reflect the probability of it becoming a matured liability).

"Special Agent Advances" shall have the meaning set forth in Section 12.11(w) hereof.

"Specified Subsidiary" shall mean (a) any Person whose Capital Stock is purchased by a Loan Party pursuant to a Permitted Acquisition and (b) any Subsidiary of a Loan Party formed pursuant to Section 9.10(l) for the purpose of making, or in anticipation of consummating, a Permitted Acquisition.

"~~Standby Letters of Credit~~" ~~shall mean all Letters of Credit other than Commercial Letters of Credit~~Specified Term Loan Collateral" shall have the meaning set forth in the Intercreditor Agreement.

"Standard Letter of Credit Practice" shall mean, for Issuing Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

"Standby Letters of Credit" shall mean all Letters of Credit other than Commercial Letters of Credit.

"Store Accounts" shall have the meaning set forth in Section 6.3(a) hereof.

"Subsidiary" or "subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

"Swap Obligation" shall mean, with respect to any Loan Party, 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.

"TA Montana" shall ~~have the meaning set forth in the preamble to this Agreement~~mean TA Operating Montana LLC, a Delaware limited liability company.

"Taxes" shall have the meaning set forth in Section 6.13 hereof.

"Term Loan Administrative Agent" shall mean Citibank, N.A., in its capacity as administrative agent under the Term Loan Agreement, and its successor and assigns, together with any replacement or successor agent thereunder.

"Term Loan Agent" shall mean Delaware Trust Company, in its capacity as collateral agent under the Term Loan Agreement, and its successor and assigns, together with any replacement or successor agent thereunder.

"Term Loan Agreement" shall mean the Credit Agreement, dated on or about the Amendment No. 4 Effective Date, by and among Term Loan Administrative Agent, Term Loan Agent, Term Loan Lenders, and the Loan Parties (other than TA West Greenwich), as the same may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original administrative agent and lenders or other agents and lenders or otherwise, and whether provided under the original credit agreement or one or more other credit agreements, indentures, financing agreements or otherwise, including any agreement extending the maturity thereof, otherwise restructuring all or any portion of the Indebtedness thereunder, increasing the amount loaned or issued thereunder, altering the maturity thereof or providing for other Indebtedness), in each case as and to the extent not prohibited by the Intercreditor Agreement, unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Term Loan Agreement.

"Term Loan Documents" shall mean, collectively, the following; (a) the Term Loan Agreement and (b) all agreements, documents and instruments at any time executed and/or delivered in connection therewith.

"Term Loan Lenders" shall mean those certain lenders and other financial institutions from time to time party to the Term Loan Agreement as lenders.

"Term Loan Priority Collateral" shall have the meaning set forth in the Intercreditor Agreement.

"Term Loans" shall mean the loans made under the Term Loan Agreement.

"Tested Subsidiaries" shall mean all Subsidiaries of Parent; provided that, if the EBITDAR or the total assets of the Excluded Subsidiaries (on a combined basis) for any period for which the Debt Incurrence Ratio or the Fixed Charge Coverage Ratio is calculated pursuant to this Agreement or any other Financing Agreement is greater than five (5%) percent of the EBITDAR or the total assets, respectively, of Parent and its Subsidiaries (on a consolidated basis) for such period, then Tested Subsidiaries shall mean all Subsidiaries of Parent other than the Excluded Subsidiaries.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of New York, and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute).

"UCP" shall mean, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by Issuing Bank for use.

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

"UK Resolution Authority" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Value" shall mean, as determined by Agent in its Permitted Discretion, with respect to Inventory, the lower of (a) cost computed on an average basis in accordance with GAAP or (b) market value, provided, that, for purposes of the calculation of the Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower or (B) write-ups or write- downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Agent prior to the Amendment No. 3 Effective Date, if any.

"Voting Stock" shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (b) the then outstanding principal amount of such Indebtedness; provided, that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended (the "Applicable Indebtedness"), the effects of any prepayments made or amortization on such Applicable Indebtedness prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

"Wells" shall mean Wells Fargo Capital Finance, LLC, a Delaware limited liability, successor by merger to Wachovia Capital Finance Corporation (Central), in its individual capacity, and its successors and assigns.

"Wells Fargo Bank" shall mean Wells Fargo Bank, National Association, a national banking association, and its successors and assigns.

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

SECTION 2. CREDIT FACILITIES

2.1 Loans.

(a) Subject to and upon the terms and conditions contained herein, each Lender severally (and not jointly) agrees to make its Pro Rata Share of Revolving Loans to Borrowers from time to time in amounts requested by a Borrower (or Administrative Borrower on behalf of such Borrower) up to the amount outstanding at any time equal to the lesser of: (i) the Borrowing Base at such time or (ii) the Maximum Credit at such time.

(b) Except in Agent's discretion and with the consent of all Lenders, or as otherwise provided herein, (i) the aggregate principal amount of the Loans and the Letters of Credit outstanding at any time shall not exceed the Maximum Credit, (ii) the aggregate principal amount of the Revolving Loans and Letters of Credit outstanding at any time shall not exceed the Borrowing Base, (iii) the aggregate principal amount of the Revolving Loans and Letters of Credit outstanding at any time based on Eligible Inventory consisting of gasoline and diesel fuel shall not exceed the Fuel Inventory Loan Limit, (iv) the aggregate principal amount of the Revolving Loans and Letters of Credit outstanding at any time based on the Eligible Inventory which is Perishable Inventory shall not exceed $4,000,000, and (v) the aggregate principal amount of Revolving Loans and Letters of Credit outstanding at any time based on Eligible Inventory shall not exceed the Inventory Loan Limit.

(c) In the event that the aggregate principal amount of the Loans and Letters of Credit outstanding exceed the Maximum Credit, or the aggregate principal amount of Revolving Loans and Letters of Credit outstanding exceed the Borrowing Base, or the aggregate principal amount of Revolving Loans and Letters of Credit outstanding based on Eligible Inventory consisting of gasoline and diesel fuel exceed the Fuel Inventory Loan Limit, the aggregate principal amount of Revolving Loans and Letters of Credit outstanding based on the Eligible Inventory which is Perishable Inventory exceeds the sublimit set forth above, the aggregate principal amount of Revolving Loans and Letters of Credit outstanding based on Eligible Inventory exceed the Inventory Loan Limit, or the aggregate amount of the outstanding Letters of Credit exceed the sublimit for Letters of Credit set forth in Section 2.2(e) hereof, such event shall not limit, waive or otherwise affect any rights of Agent or Lenders in such circumstances or on any future occasions and Borrowers shall, upon demand by Agent, which may be made at any time or from time to time, immediately repay to Agent the entire amount of any such excess(es) for which payment is demanded.

2.2 Letters of Credit.

(a) Subject to the terms and conditions of this Agreement, upon the request of a Borrower made in accordance herewith, and prior to the Maturity Date, Issuing Bank agrees to issue a requested standby Letter of Credit or a sight commercial Letter of Credit for the account of a Borrower. By submitting a request to Issuing Bank for the issuance of a Letter of Credit, a Borrower shall be deemed to have requested that Issuing Bank issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be (i) irrevocable and made in writing by an Authorized Person, (ii) delivered to Agent and Issuing Bank via telefacsimile or other electronic method of transmission reasonably acceptable to Agent and Issuing Bank and reasonably in advance of the requested date of issuance, amendment, renewal, or extension, and (iii) subject to Issuing Bank's authentication procedures with results satisfactory to Issuing Bank. Each such request shall be in form and substance reasonably satisfactory to Agent and Issuing Bank and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as Agent or Issuing Bank may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Bank generally requests for Letters of Credit in similar circumstances. Issuing Bank's records of the content of any such request will be conclusive. Anything contained herein to the contrary notwithstanding, Issuing Bank may, but shall not be obligated to, issue a Letter of Credit that supports the obligations of a Loan Party or one of its Subsidiaries in respect of (x) a lease of real property to the extent that the face amount of such Letter of Credit exceeds the highest rent (including all rent-like charges) payable under such lease for a period of one year, or (y) an employment contract to the extent that the face amount of such Letter of Credit exceeds the highest compensation payable under such employment contract for a period of one year.

(b) Issuing Bank shall have no obligation to issue a Letter of Credit if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed the Letter of Credit Sublimit, or

(ii) the Letter of Credit Usage would exceed the Maximum Credit less the outstanding principal amount of Revolving Loans, or

(iii) the Letter of Credit Usage would exceed the Borrowing Base less the outstanding principal amount of the Revolving Loans.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, Issuing Bank shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.2(t)(i) hereof, or (ii) Issuing Bank has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate Issuing Bank's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include Borrowers cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.2(t)(ii) hereof. Additionally, Issuing Bank shall have no obligation to issue or extend a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Bank from issuing such Letter of Credit, or any law applicable to Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Bank shall prohibit or request that Issuing Bank refrain from the issuance of letters of credit generally or such Letter of Credit in particular, (B) the issuance of such Letter of Credit would violate one or more policies of Issuing Bank applicable to letters of credit generally, or (C) if amounts demanded to be paid under any Letter of Credit will not or may not be in United States Dollars.

(d) Any Issuing Bank (other than Wells Fargo Bank or any of its Affiliates) shall notify Agent in writing no later than the Business Day prior to the Business Day on which such Issuing Bank issues any Letter of Credit. In addition, each Issuing Bank (other than Wells Fargo Bank or any of its Affiliates) shall, on the first Business Day of each week, submit to Agent a report detailing the daily undrawn amount of each Letter of Credit issued by such Issuing Bank during the prior calendar week. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Bank, including the requirement that the amounts payable thereunder must be payable in U.S. Dollars. If Issuing Bank makes a payment under a Letter of Credit, Borrowers shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 4.2 hereof) and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Bank shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to Issuing Bank or, to the extent that Lenders have made payments pursuant to Section 2.2(e) to reimburse Issuing Bank, then to such Lenders and Issuing Bank as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.2(d) hereof, each Lender agrees to fund its Pro Rata Share of any Revolving Loan deemed made pursuant to Section 2.2(d) hereof, on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Bank the amounts so received by it from the Lenders. By the issuance of a Letter of Credit (or an amendment, renewal, or extension of a Letter of Credit) and without any further action on the part of Issuing Bank or the Lenders, Issuing Bank shall be deemed to have granted to each Lender, and each Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Bank, in an amount equal to its Pro Rata Share of such Letter of Credit, and each such Lender agrees to pay to Agent, for the account of Issuing Bank, such Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Bank under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Bank, such Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Bank and not reimbursed by Borrowers on the date due as provided in Section 2.2(d) hereof, or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Bank elects, based upon the advice of counsel, to refund) to Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Bank, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.2(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 4.2 hereof. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Bank) shall be entitled to recover such amount on demand from such Lender together with interest thereon until paid in full at the Base Rate and if such failure continues for three days, at the highest Interest Rate provided for in Section 3.1 applicable to Base Rate Loans.

(f) Each Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Bank and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Bank, a "Letter of Credit Related Person") (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any Letter of Credit Related Person (other than Taxes, which shall be governed by Section 6.13 hereof) (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of this Agreement, any Letter of Credit, any Issuer Document, or any Drawing Document referred to in or related to any Letter of Credit, or any action or proceeding arising out of any of the foregoing (whether administrative, judicial or in connection with arbitration); in each case, including that resulting from the Letter of Credit Related Person's own negligence, and including without limitation any prohibition on payment or delay in payment of any amount payable by Issuing bank to a beneficiary or transferee beneficiary of a Letter of Credit arising out of Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions; provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Letter of Credit Related Person claiming indemnity. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of Issuing Bank (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrowers that are caused directly by Issuing Bank's gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit, or (iii) retaining Drawing Documents presented under a Letter of Credit. Borrowers' aggregate remedies against Issuing Bank and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Borrowers to Issuing Bank in respect of the honored presentation in connection with such Letter of Credit under Section 2.2(d), plus interest at the rate then applicable to Base Rate Loans hereunder. Borrowers shall take action to avoid and mitigate the amount of any damages claimed against Issuing Bank or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by Borrowers as a result of the breach or alleged wrongful conduct complained of, and (y) the amount (if any) of the loss that would have been avoided had Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Issuing Bank to effect a cure.

(h) Borrowers are responsible for the final text of the Letter of Credit as issued by Issuing Bank, irrespective of any assistance Issuing Bank may provide such as drafting or recommending text or by Issuing Bank's use or refusal to use text submitted by Borrowers. Borrowers understand that the final form of any Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by Issuing Bank, and Borrowers hereby consent to such revisions and changes not materially different from the application executed in connection therewith. Borrowers are solely responsible for the suitability of the Letter of Credit for Borrowers' purposes. If Borrowers request Issuing Bank to issue a Letter of Credit for an affiliated or unaffiliated third party (an "Account Party"), (i) such Account Party shall have no rights against Issuing Bank; (ii) Borrowers shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Letter of Credit shall be among Issuing Bank and Borrowers. Borrowers will examine the copy of the Letter of Credit and any other documents sent by Issuing Bank in connection therewith and shall promptly notify Issuing Bank (not later than three (3) Business Days following Borrowers' receipt of documents from Issuing Bank) of any non-compliance with Borrowers' instructions and of any discrepancy in any document under any presentment or other irregularity. Borrowers understand and agree that Issuing Bank is not required to extend the expiration date of any Letter of Credit for any reason. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, Issuing Bank, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if Borrowers do not at any time want the then current expiration date of such Letter of Credit to be extended, Borrowers will so notify Agent and Issuing Bank at least thirty (30) calendar days before Issuing Bank is required to notify the beneficiary of such Letter of Credit or any advising bank of such non-extension pursuant to the terms of such Letter of Credit.

(i) Borrowers' reimbursement and payment obligations under this Section 2.11 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever; provided, that subject to Section 2.11(g) hereof, the foregoing shall not release Issuing Bank from such liability to Borrowers as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against Issuing Bank following reimbursement or payment of the obligations and liabilities, including reimbursement and other payment obligations, of Borrowers to Issuing Bank arising under, or in connection with, this Section 2.11 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, Issuing Bank and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrowers for, and Issuing Bank's rights and remedies against Borrowers and the obligation of Borrowers to reimburse Issuing Bank for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Issuing Bank's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that Issuing Bank in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to any Borrower;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any presenting bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Issuing Bank has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Issuing Bank if subsequently Issuing Bank or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by Issuing Bank to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(k) Borrowers shall pay on the first Business Day of each month, for the account of Issuing Bank as non-refundable fees, commissions, and charges (i) a fronting fee which shall be imposed by Issuing Bank equal to 0.125% per annum times the average amount of the Letter of Credit Usage during the immediately preceding month, plus (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, Issuing Bank, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, renewals or cancellations).

(l) If by reason of (x) any Change in Law, or (y) compliance by Issuing Bank or any other member of the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board of Governors as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or any Loans or obligations to make Loans hereunder or hereby, or

(ii) there shall be imposed on Issuing Bank or any other member of the Lender Group any other condition regarding any Letter of Credit, Loans, or obligations to make Loans hereunder,

(iii) and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Bank or any other member of the Lender Group of issuing, making, participating in, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrowers, and Borrowers shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate Issuing Bank or any other member of the Lender Group for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, that (A) Borrowers shall not be required to provide any compensation pursuant to this Section 2.2(l) for any such amounts incurred more than one hundred and eighty (180) days prior to the date on which the demand for payment of such amounts is first made to Borrowers, and (B) if an event or circumstance giving rise to such amounts is retroactive, then the one hundred and eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.2(l), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(m) Each standby Letter of Credit shall expire not later than the date that is twelve (12) months after the date of the issuance of such Letter of Credit; provided, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration; provided further, that with respect to any Letter of Credit which extends beyond the Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five Business Days prior to the Maturity Date. Each commercial Letter of Credit shall expire on the earlier of (i) one hundred and twenty (120) days after the date of the issuance of such commercial Letter of Credit and (ii) five (5) Business Days prior to the Maturity Date.

(n) If (i) any Event of Default shall occur and be continuing, or (ii) Excess Availability shall at any time be less than zero, then on the Business Day following the date when the Administrative Borrower receives notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, Lenders with Letter of Credit Exposure representing greater than fifty (50%) percent of the total Letter Credit Exposure) demanding Letter of Credit Collateralization pursuant to this Section 2.2(n) upon such demand, Borrowers shall provide Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage. If Borrowers are required to provide Letter of Credit Collateralization hereunder as a result of the occurrence of an Event of Default, any cash collateral held by Agent as a result of such Letter of Credit Collateralization shall be returned by Agent to Borrowers promptly, but in no event later than seven (7) Business Days, after such Event of Default has been waived in accordance with this Agreement. If Borrowers fail to provide Letter of Credit Collateralization as required by this Section 2.2(n), the Lenders may (and, upon direction of Agent, shall) advance, as Revolving Loans the amount of the cash collateral required pursuant to the Letter of Credit Collateralization provision so that the then existing Letter of Credit Usage is cash collateralized in accordance with the Letter of Credit Collateralization provision (whether or not the Commitments have terminated or the conditions in Section 4.2 are satisfied).

(o) Unless otherwise expressly agreed by Issuing Bank and Borrowers when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

(p) Issuing Bank shall be deemed to have acted with due diligence and reasonable care if Issuing Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement.

(q) In the event of a direct conflict between the provisions of this Section 2.2 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.2 shall control and govern.

(r) The provisions of this Section 2.2 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Letters of Credit that remain outstanding.

(s) At Borrowers' costs and expense, Borrowers shall execute and deliver to Issuing Bank such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by Issuing Bank to enable Issuing Bank to issue any Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce Issuing Banks' rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Each Borrower irrevocably appoints Issuing Bank as its attorney-in-fact and authorizes Issuing Bank, without notice to Borrowers, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by the Borrowers is limited solely to such actions related to the issuance, confirmation or amendment of any Letter of Credit and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

(t) If any Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(i) such Defaulting Lender's Letter of Credit Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (A) the sum of all Non-Defaulting Lenders' Pro Rata Share of the outstanding principal amount of the Revolving Loans *plus* such Defaulting Lender's Letter of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Commitments and (B) the conditions set forth in Section 4.2 hereof are satisfied at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by the Agent, cash collateralize such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Borrowers shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also Issuing Bank;

(iii) if Borrowers cash collateralize any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to Section 2.2(t)(ii) hereof, Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 3.2(b) hereof with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(iv) to the extent the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to Section 2.2(t)(i) hereof, then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 3.2(b) hereof shall be adjusted in accordance with such Non-Defaulting Lenders' Letter of Credit Exposure;

(v) to the extent any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to Section 2.2(t) hereof, then, without prejudice to any rights or remedies of Issuing Bank or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 3.2(b) hereof with respect to such portion of such Letter of Credit Exposure shall instead be payable to Issuing Bank until such portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized or reallocated; and

(vi) Agent may release any cash collateral provided by Borrowers pursuant to Section 2.2(t)(ii) hereof to Issuing Bank and Issuing Bank may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrowers pursuant to Section 2.2(d) hereof. Subject to Section 13.12 hereof, 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.

2.3 Increase in Maximum Credit.

(a) Administrative Borrower may, at any time and from time to time, deliver a written request to Agent to increase the Maximum Credit. Any such written request shall specify the amount of the requested increase in the Maximum Credit that Administrative Borrower is requesting, provided, that, (i) in no event shall the aggregate amount of any increase in the Maximum Credit cause the Maximum Credit to exceed the lesser of (A) $300,000,000 or (B) for so long as the Intercreditor Agreement is in effect, the ABL Cap (as defined in the Intercreditor Agreement), (ii) any such request for an increase shall be for an increase of not less than $10,000,000, (iii) any such request shall be irrevocable, and (iv) in no event shall more than two (2) such increases be made in any calendar year.

(b) Upon the receipt by Agent of a written request to increase the Maximum Credit, Agent shall notify each of the Lenders of such request and each Lender (other than a Defaulting Lender) shall have the option (but not the obligation) to increase the amount of its Commitment by an amount up to its Pro Rata Share of the amount of the increase in the Maximum Credit requested by Administrative Borrower as set forth in the notice from Agent to such Lender. Each Lender shall notify Agent within thirty (30) days (or such shorter period as Agent and Administrative Borrower shall specify and agree) after the receipt of such notice of a request for such increase from Agent whether it is willing to so increase its Commitment, and if so, the amount of such increase; provided, that, no Lender shall be obligated to provide such increase in its Commitment and the determination to increase the Commitment of a Lender shall be within the sole and absolute discretion of such Lender. If the aggregate amount of the increases in the Commitments received from the Lenders does not equal or exceed the amount of the increase in the Maximum Credit requested by Administrative Borrower, Agent and Administrative Borrower may seek additional increases from Lenders or Commitments from such Eligible Transferees as they may determine. In the event Lenders (or Lenders and any such Eligible Transferees, as the case may be) have committed in writing to provide increases in their Commitments or new Commitments in an aggregate amount in excess of the increase in the Maximum Credit requested by Borrowers or permitted hereunder, Agent and Administrative Borrower shall then have the right to allocate such commitments, first to Lenders and then to Eligible Transferees, in such amounts and manner as Agent and Administrative Borrower may determine.

(c) In the event of a request to increase the Maximum Credit, the Maximum Credit shall be increased by the amount of the increase in Commitments from Lenders or new Commitments from Eligible Transferees, in each case selected in accordance with Section 2.3(b), for which Agent has received Assignment and Acceptances (or other agreements acceptable to Agent and Administrative Borrower) within sixty (60) days after the date of the request by Administrative Borrower for the increase or such earlier date as Agent and Administrative Borrower may agree (but subject to the satisfaction of the conditions set forth below), whether or not the aggregate amount of the increase in Commitments and new Commitments, as the case may be, equal or exceed the amount of the increase in the Maximum Credit requested by Administrative Borrower in accordance with the terms hereof, effective on the date that each of the following conditions have been satisfied:

(i) Agent shall have received from each Lender or Eligible Transferee that is providing an additional Commitment as part of the increase in the Maximum Credit, an Assignment and Acceptance (or another agreement acceptable to Agent and Administrative Borrower) duly executed by such Lender or Eligible Transferee and Administrative Borrower;

(ii) the conditions precedent to the making of Revolving Loans set forth in Section 4.2 hereof shall be satisfied as of the date of the increase in the Maximum Credit, both before and after giving effect to such increase;

(iii) Agent shall have received such agreements, documents and instruments (including legal opinions) as Agent may reasonably request, in form and substance reasonably satisfactory to Agent;

(iv) such increase in the Maximum Credit on the date of the effectiveness thereof shall not violate any applicable law, regulation or order or decree of any court or other Governmental Authority and shall not be enjoined, temporarily, preliminarily or permanently;

(v) there shall have been paid to each Lender and Eligible Transferee providing an additional Commitment in connection with such increase in the Maximum Credit all fees (including any additional commitment fees) due and payable to such Person on or before the effectiveness of such increase; and

(vi) there shall have been paid to Agent all costs and expenses (including reasonable fees and expenses of counsel) due and payable to Agent pursuant to any of the Financing Agreements on or before the effectiveness of such increase.

(d) As of the effective date of any such increase in the Maximum Credit, each reference to the term Maximum Credit and Commitments herein and in any of the other Financing Agreements shall be deemed amended to mean the amount of the Maximum Credit and Commitments specified in the most recent written notice from Agent to Administrative Borrower of the increase in the Maximum Credit and Commitments.

(e) Borrowers shall, in coordination with Agent, prepay certain Revolving Loans outstanding on the effective date of such increase and incur additional Loans from certain other Lenders with outstanding Revolving Loans or Commitments, in each case to the extent necessary so that all Lenders with Commitments participate in each outstanding borrowing hereunder pro rata on the basis of their respective Commitments (after giving effect to any increase in the Maximum Credit and Commitments pursuant to this Section 2.3). At the time of any increase in the Maximum Credit and Commitments pursuant to this Section 2.3, the Pro Rata Shares of the Lenders shall be automatically adjusted based upon their Commitments after giving effect to such increase in the Maximum Credit and Commitments so that all Lenders shall share in all liabilities with respect to Letters of Credit and outstandings pursuant thereto in accordance with their revised Pro Rata Shares. Upon the effectiveness of any increase in the Maximum Credit and Commitments under this Section 2.3, Administrative Borrower and Agent may (without the consent of any Lender) amend this Agreement to the extent (but only to the extent) necessary to reflect such increase in the Maximum Credit and Commitments.

(f) This Section 2.3 shall supersede any provisions in Sections 6.8 and 11.3 hereof to the contrary.

2.4 Decrease in Maximum Credit.

(a) Administrative Borrower may, at any time and from time to time, deliver a written request to Agent to decrease the Maximum Credit. Any such written request shall specify the amount of the decrease in the Maximum Credit that Administrative Borrower is requesting and the effective date of such decrease (which date shall not be less than five (5) nor more than ten (10) Business Days after the date of such request); provided, that, (i) any such request for a decrease shall be for an amount of not less than $10,000,000, (ii) any such request shall be irrevocable, and (iii) in no event shall more than one (1) such decrease be made in any calendar year.

(b) Upon the receipt by Agent of a written request to decrease the Maximum Credit, Agent shall notify each of the Lenders of such request and the Commitment of each Lender shall be decreased on the date requested by Administrative Borrower by an amount equal to such Lender's Pro Rata Share of the amount of the decrease in the Maximum Credit requested by Administrative Borrower as set forth in the notice from Agent to such Lender.

(c) In the event of a request to decrease the Maximum Credit, the Maximum Credit shall be decreased by the amount of the decrease in Maximum Credit requested by Administrative Borrower in accordance with the terms hereof; provided, that, after giving effect to such decrease, the Maximum Credit shall not be less than the aggregate amount of the Loans and Letters of Credit outstanding at such time.

(d) As of the effective date of any such decrease in the Maximum Credit, each reference to the term Maximum Credit and Commitments herein and in any of the other Financing Agreements shall be deemed amended to mean the amount of the Maximum Credit and Commitments specified in the most recent written notice from Agent to Administrative Borrower of the decrease in the Maximum Credit and Commitments.

2.5 Commitments. The aggregate amount of each Lender's Pro Rata Share of the Loans and Letters of Credit shall not exceed the amount of such Lender's Commitment, as the same may from time to time be amended in accordance with the provisions hereof.

SECTION 3. INTEREST AND FEES; PROCEDURES FOR BORROWING

3.1 Interest; Procedures for Borrowing..

(a) Borrowers shall pay to Agent, for the benefit of Lenders, interest on the outstanding principal amount of the Loans at the Interest Rate. All interest accruing hereunder upon the occurrence and during the continuance of any Event of Default or after the termination hereof shall be payable on demand.

(b) Each Borrower (or Administrative Borrower on behalf of such Borrower) may from time to time request Base Rate Loans by a written request by an Authorized Person delivered to Agent (which may be delivered through Agent's electronic platform or portal). All such requests which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such borrowings shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Revolving Loan. Subject to the terms and conditions contained herein, if Agent receives such a request on the Business Day specified in such request, the Base Rate Loan requested in such request shall be made on such Business Day; provided, that, if Agent receives such a request after 12:00 noon Chicago, Illinois time on any Business Day, the Base Rate Loan requested in such request shall be made not later than the next succeeding Business Day after the Business Day that such request is received by Agent. Each Borrower (or Administrative Borrower on behalf of such Borrower) may from time to time request Eurodollar Rate Loans or may request that Base Rate Loans be converted to Eurodollar Rate Loans or that any existing Eurodollar Rate Loans continue for an additional Interest Period. Such request from a Borrower (or Administrative Borrower on behalf of such Borrower) must be received by Agent not later than 12:00 p.m. Chicago, Illinois time three (3) Business Days prior to the requested date of any Eurodollar Rate Loans or any conversion to, or continuation of, any Eurodollar Rate Loans and shall specify the amount of the Eurodollar Rate Loans or the amount of the Base Rate Loans to be converted to Eurodollar Rate Loans or the amount of the Eurodollar Rate Loans to be continued (subject to the limits set forth below) and the Interest Period to be applicable to such Eurodollar Rate Loans. Subject to the terms and conditions contained herein, after receipt by Agent of such a request (or deemed request) from a Borrower (or Administrative Borrower on behalf of such Borrower), such Eurodollar Rate Loans shall be made or Base Rate Loans shall be converted to Eurodollar Rate Loans or such Eurodollar Rate Loans shall continue, as the case may be, provided, that, (i) no Default or Event of Default shall have occurred and be continuing, (ii) no more than six (6) Interest Periods may be in effect at any one time, and (iii) the aggregate amount of the Eurodollar Rate Loans must be in an amount not less than $1,000,000 or an integral multiple of $1,000,000 in excess thereof. Any request (or deemed request) by or on behalf of a Borrower for Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans or to continue any existing Eurodollar Rate Loans shall be irrevocable. Notwithstanding anything to the contrary contained herein, Agent and Lenders shall not be required to purchase United States Dollar deposits in the London interbank market or other applicable Eurodollar Rate market to fund any Eurodollar Rate Loans, but the provisions hereof shall be deemed to apply as if Agent and Lenders had purchased such deposits to fund the Eurodollar Rate Loans.

(c) Unless Agent has received a request to the contrary from a Borrower (or Administrative Borrower on behalf of such Borrower) at least three (3) Business Days prior to the last day of the Interest Period for any Eurodollar Rate Loan, Administrative Borrower shall, automatically and without any further action, be deemed to have requested that the entire amount of such Eurodollar Rate Loan be continued as a new Eurodollar Rate Loan having an Interest Period of one (1) month; provided, that, if the conditions contained in Section 3.1(b) hereof with respect to the continuation of such Eurodollar Rate Loan are not satisfied, then such Eurodollar Rate Loan shall automatically convert to Base Rate Loans upon the last day of the applicable Interest Period. Any Eurodollar Rate Loans shall, at Agent's option, upon notice by Agent to Parent, be subsequently converted to Base Rate Loans in the event that this Agreement shall terminate or not be renewed and any such Eurodollar Rate Loans remain outstanding.

(d) Interest shall be payable by Borrowers to Agent, for the account of Lenders, monthly in arrears not later than the first day of each calendar month and shall be calculated on the basis of a three hundred sixty (360) day year (or, in the case of Base Rate Loans, a 365 or 366 day year, as the case may be) and actual days elapsed. The interest rate on Base Rate Loans shall increase or decrease by an amount equal to each increase or decrease in the Base Rate effective on the day of any change in such Base Rate is announced. In no event shall charges constituting interest payable by Borrowers to Agent and Lenders exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any such part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

3.2 Fees.

(a) Borrowers shall pay to Agent, for the account of Lenders, monthly an unused line fee at a rate equal to the Applicable Fee Rate per annum calculated upon the amount by which the Maximum Credit exceeds the average daily principal balance of the outstanding Revolving Loans and Letters of Credit during the immediately preceding month (or part thereof) while this Agreement is in effect and for so long thereafter as any of the Obligations are outstanding, which fee shall be payable on the first day of each month in arrears.

(b) Borrowers shall pay Agent (for the ratable benefit of the Lenders), a Letter of Credit fee (the "Letter of Credit Fee") (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.2(k) hereof) on the daily outstanding balance of (a) each Standby Letter of Credit at a rate per annum equal to the then Applicable Margin for Eurodollar Rate Loans and (b) each Commercial Letter of Credit at a rate per annum equal to one-half (1/2) of the then Applicable Margin for Eurodollar Rate Loans, in each case payable monthly in arrears on the first Business Day of each month.

(c) Borrowers agree to pay to Agent the other fees and amounts set forth in the Fee Letter in the amounts and at the times specified therein.

3.3 Changes in Laws and Increased Costs of Loans.

(a) If after the date hereof, either (i) any change in, or in the interpretation of, any law or regulation is introduced, including, without limitation, with respect to reserve requirements (other than reserve requirements to the extent reflected in the Adjusted Eurodollar Rate as determined by Agent in good faith), applicable to Lender or any banking or financial institution from whom any Lender borrows funds or obtains credit (a "Funding Bank"), or (ii) a Funding Bank or any Lender complies with any future guideline or request from any central bank or other Governmental Authority or (iii) a Funding Bank or any Lender determines that the adoption after the date hereof of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof has or would have the effect described below, or a Funding Bank or any Lender complies with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, and in the case of any event set forth in this clause (iii), such adoption, change or compliance has or would have the direct or indirect effect of reducing the rate of return on any Lender's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's or Lender's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, and the result of any of the foregoing events described in clauses (i), (ii) or (iii) is or results in an increase in the cost to any Lender of funding or maintaining the Loans, the Letters of Credit or its Commitment, then Loan Parties shall from time to time, no later than ten (10) Business Days following demand by Agent, pay to Agent additional amounts sufficient to indemnify Lenders against such increased cost on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified). A certificate as to the amount of such increased cost shall be submitted to Administrative Borrower by Agent and shall be conclusive, absent manifest error. Failure or delay on the part of Agent to demand compensation pursuant to this Section 3.1(a) shall not constitute a waiver of Agent's right to demand such compensation; provided, that, Loan Parties shall not be required to compensate a Lender pursuant to this Section 3.1(a) for any increased costs incurred more than six months prior to the date Agent notifies Administrative Borrower of such increased costs (except, that, if the change in law or other event giving rise to such increased costs is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof). The Dodd-Frank Wall Street Reform and Consumer Protection Act, the Basel Committee on Banking Supervision and all requests, rules, guidelines or directives promulgated thereunder or in connection therewith shall be deemed to have gone into effect after the date hereof regardless of the date actually enacted, adopted, promulgated or issued.

(b) If prior to the first day of any Interest Period, (i) Agent shall have determined in good faith (which determination shall be conclusive and binding upon Loan Parties) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Adjusted Eurodollar Rate for such Interest Period, (ii) Agent has received notice from the Required Lenders that the Adjusted Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to Lenders of making or maintaining Eurodollar Rate Loans during such Interest Period, or (iii) Dollar deposits in the principal amounts of the Eurodollar Rate Loans to which such Interest Period is to be applicable are not generally available in the London interbank market, Agent shall give telecopy or telephonic notice thereof to Administrative Borrower as soon as practicable thereafter, and will also give prompt written notice to Administrative Borrower when such conditions no longer exist. If such notice is given (A) any Eurodollar Rate Loans requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (B) any Loans that were to have been converted on the first day of such Interest Period to or continued as Eurodollar Rate Loans shall be converted to or continued as Base Rate Loans and (C) each outstanding Eurodollar Rate Loan shall be converted, on the last day of the then-current Interest Period thereof, to Base Rate Loans. Until such notice has been withdrawn by Agent, no further Eurodollar Rate Loans shall be made or continued as such, nor shall any Borrower (or Administrative Borrower on behalf of any Borrower) have the right to convert Base Rate Loans to Eurodollar Rate Loans.

(c) Notwithstanding any other provision herein, if the adoption of or any change in any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a court or other Governmental Authority or in the interpretation or application thereof occurring after the date hereof shall make it unlawful for Agent or any Lender to make or maintain Eurodollar Rate Loans as contemplated by this Agreement, (i) Agent or such Lender shall promptly give written notice of such circumstances to Administrative Borrower (which notice shall be withdrawn whenever such circumstances no longer exist), (ii) the commitment of such Lender hereunder to make Eurodollar Rate Loans, continue Eurodollar Rate Loans as such and convert Base Rate Loans to Eurodollar Rate Loans shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Lender to make or maintain Eurodollar Rate Loans, such Lender shall then have a commitment only to make a Base Rate Loan when a Eurodollar Rate Loan is requested and (iii) such Lender's Loans then outstanding as Eurodollar Rate Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Loan Parties shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.3(d) below.

(d) Loan Parties shall indemnify Agent and each Lender and hold Agent and each Lender harmless from any loss or expense which Agent or such Lender sustains or incurs as a consequence of (i) default by Borrower in making a borrowing of, conversion into or extension of Eurodollar Rate Loans after such Borrower (or Administrative Borrower on behalf of such Borrower) has given a notice requesting the same in accordance with the provisions of this Loan Agreement, (ii) default by any Borrower in making any prepayment of a Eurodollar Rate Loan after such Borrower has given a notice thereof in accordance with the provisions of this Agreement, and (iii) the making of a prepayment of Eurodollar Rate Loans, or the conversion of Eurodollar Rate Loans to Base Rate Loans, on a day which is not the last day of an Interest Period with respect thereto. With respect to Eurodollar Rate Loans, such indemnification may include an amount equal to the excess, if any, of (A) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or extended, for the period from the date of such prepayment or of such failure to borrow, convert or extend to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or extend, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Rate Loans provided for herein over (B) the amount of interest (as determined by Agent or such Lender in good faith) which would have accrued to Agent or such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. This covenant shall survive the termination or non-renewal of this Loan Agreement and the payment of the Obligations.

3.4 Effect of Benchmark Transition Event.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Financing Agreement, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, Agent and Administrative Borrower may amend this Agreement to replace the Adjusted Eurodollar Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event (or an Early Opt-in Election) will become effective at 5:00 p.m. on the fifth (5th) Business Day after Agent has provided notice to all Lenders of such proposed amendment so long as Agent has not received, by such time, written notice of objection to such amendment from the Required Lenders. No replacement of the Adjusted Eurodollar Rate with a Benchmark Replacement pursuant to this Section 3.4 will occur prior to the applicable Benchmark Transition Start Date.

(b) Benchmark Replacement Conforming Changes. In connection with a Benchmark Replacement, Agent shall have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Financing Agreement, any Benchmark Replacement Conforming Changes (together with the replacement of the Adjusted Eurodollar Rate with a Benchmark Replacement) will become effective without any further action or the consent of any Lender or any other party to this Agreement.

(c) Notices; Standards for Decisions and Determinations. Agent will promptly notify Administrative Borrower and 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 Agent or Lenders pursuant to this Section 3.4, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.4.

(d) Benchmark Unavailability Period. Upon Administrative Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, Administrative Borrower may, upon notice to Agent not less than twenty-four (24) hours prior to the date that such Adjusted Eurodollar Rate Loan is to be made or converted or continued, revoke any request for a borrowing of a Adjusted Eurodollar Rate Loan or, conversion to or continuation of a Adjusted Eurodollar Rate Loan to be made, converted or continued during any Benchmark Unavailability Period, provided, that, in the event that Administrative Borrower does not revoke such request or does not revoke such request in the time or manner required, any such request shall be deemed to be a request for a borrowing of, or conversion to, a Base Rate Loan. During any Benchmark Unavailability Period, the component of Base Rate based upon the Adjusted Eurodollar Rate will not be used in any determination of the Base Rate.

(e) Certain Defined Terms. As used herein:

(i) "Benchmark Replacement" means the sum of: (a) the alternate benchmark rate that has been selected by Agent and Administrative 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 Adjusted 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.

(ii) "Benchmark Replacement Adjustment" means, with respect to any replacement of the Adjusted Eurodollar Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by Agent and Administrative 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 Adjusted 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 Adjusted Eurodollar Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

(iii) "Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational amendments to any Financing Agreement (including amendments 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 Agent determines are appropriate or desirable to reflect the use of such Benchmark Replacement and to permit the administration thereof by Agent in accordance with its practices and procedures.

(iv) "Benchmark Replacement Date" means the earlier to occur of the following events with respect to the Adjusted Eurodollar Rate:

(A) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Adjusted Eurodollar Rate permanently or indefinitely ceases to provide the Adjusted Eurodollar Rate; or

(B) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

(v) "Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the Adjusted Eurodollar Rate:

(A) a public statement or publication of information by or on behalf of the administrator of the Adjusted Eurodollar Rate announcing that such administrator has ceased or will cease to provide the Adjusted Eurodollar Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that is providing the Adjusted Eurodollar Rate;

(B) a public statement or publication of information by the regulatory supervisor for the administrator of the Adjusted Eurodollar Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Adjusted Eurodollar Rate, a resolution authority with jurisdiction over the administrator for the Adjusted Eurodollar Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Adjusted Eurodollar Rate, which states that the administrator of the Adjusted Eurodollar Rate has ceased or will cease to provide the Adjusted 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 Adjusted Eurodollar Rate; or

(C) a public statement or publication of information by the regulatory supervisor for the administrator of the Adjusted Eurodollar Rate announcing that the Adjusted Eurodollar Rate is no longer representative.

(vi) "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 ninetieth (90^{th}) 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 less than ninety (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 Agent by notice to Administrative Borrower and Lenders.

(vii) "Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Adjusted Eurodollar Rate, the period (a) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the Adjusted Eurodollar Rate for all purposes hereunder in accordance with Section 3.4 and (b) ending at the time that a Benchmark Replacement has replaced the Adjusted Eurodollar Rate for all purposes hereunder pursuant to this Section 3.4.

(viii) "Early Opt-in Election" means the election by Agent, at its option, to seek an amendment to this Agreement to use a new benchmark interest rate to replace the Adjusted Eurodollar Rate based on a determination by Agent that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include terms similar to the terms of this Section 3.4 are being executed or amended, as applicable, to use a new benchmark interest rate to replace the Adjusted Eurodollar Rate or such other events or conditions as Agent may determine.

(ix) "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.

(x) "Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

SECTION 4. CONDITIONS PRECEDENT

4.1 Conditions Precedent to Initial Loans and Letters of Credit. Each of the following is a condition precedent to Agent and Lenders making the initial Loans and providing the initial Letters of Credit hereunder:

(a) all requisite corporate action and proceedings in connection with this Agreement and the other Financing Agreements shall be satisfactory in form and substance to Agent, and Agent shall have received all information and copies of all documents, including records of requisite corporate action and proceedings which Agent may have requested in connection therewith, such documents where requested by Agent or its counsel to be certified by appropriate corporate officers or Governmental Authority (and including a copy of the certificate of incorporation or formation of each Loan Party certified by the Secretary of State (or equivalent Governmental Authority) which shall set forth the same complete name of such Loan Party as is set forth herein and such document as shall set forth the organizational identification number of each Loan Party, if one is issued in its jurisdiction of incorporation);

(b) no Material Adverse Effect shall have occurred since the date of Agent's latest field examination;

(c) Agent shall have received, in form and substance reasonably satisfactory to Agent, all consents, waivers, acknowledgments and other agreements from third persons which Agent may deem necessary or desirable in order to permit, protect and perfect its security interests in and liens upon the Collateral or to effectuate the provisions or purposes of this Agreement and the other Financing Agreements;

(d) the Excess Availability as determined by Agent, as of the date hereof, shall be not less than $50,000,000 after giving effect to the initial Loans made or to be made on the date hereof and Letters of Credit issued or to be issued on the date hereof in connection with the initial transactions hereunder;

(e) Agent shall have received evidence, in form and substance reasonably satisfactory to Agent, that Agent has a valid perfected first priority security interest in all of the Collateral;

(f) Agent shall have received evidence of insurance and loss payee endorsements required hereunder and under the other Financing Agreements, in form and substance reasonably satisfactory to Agent, and certificates of insurance policies and/or endorsements naming Agent as loss payee;

(g) Agent shall have received, in form and substance satisfactory to Agent, projected income statements, balance sheets and statements of cash flow for Parent and its Subsidiaries (on a consolidated basis) prepared on a monthly basis for the period through December 31, 2011 and thereafter, on an annual basis for each fiscal year through December 31, 2013, in each case with the results and assumptions set forth in all of such projections in form and substance reasonably satisfactory to Agent;

(h) Agent shall have received a Borrowing Base Certificate setting forth the Revolving Loans and Letters of Credit available to Borrowers as of the date hereof which reflects the calculation of the Borrowing Base as of September 30, 2011, which Borrowing Base Certificate shall be completed in a manner consistent with the terms hereof and duly authorized, executed and delivered on behalf of Administrative Borrower;

(i) Agent shall have received, in form and substance reasonably satisfactory to Agent, such opinion letters of counsel to Loan Parties with respect to the Financing Agreements and such other matters as Agent may request; and

(j) the other Financing Agreements and all instruments and documents hereunder and thereunder shall have been duly executed and delivered to Agent, in form and substance reasonably satisfactory to Agent.

4.2 Conditions Precedent to All Loans and Letters of Credit. Each of the following is an additional condition precedent to the Loans and/or providing Letters of Credit to Borrowers, including the initial Loans and Letters of Credit and any future Loans and Letters of Credit:

(a) all representations and warranties contained herein and in the other Financing Agreements shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate in all material respects on and as of such earlier date);

(b) no law, regulation, order, judgment or decree of any Governmental Authority shall exist, and no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which (i) purports to enjoin, prohibit, restrain or otherwise adversely affect (A) the making of the Loans or providing the Letters of Credit, or (B) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements or (ii) has or has a reasonable likelihood of having a Material Adverse Effect; and

(c) no Default or Event of Default shall have occurred and be continuing on and as of the date of the making of such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto.

SECTION 5. GRANT AND PERFECTION OF SECURITY INTEREST

5.1 Grant of Security Interest. To secure payment and performance of all Obligations, each Loan Party hereby grants to Agent, for itself and the benefit of Secured Parties, a continuing security interest in, a lien upon, and a right of set off against, and hereby collaterally assigns to Agent, for itself and the benefit of Secured Parties, as security, all of the following personal property, and interests in personal property, of each Loan Party (and hereby confirms, reaffirms and restates the prior grant thereof), whether now owned or hereafter acquired or existing, and wherever located (collectively, but excluding the items contained in the last paragraph of this Section, the "Collateral"):

(a) all Accounts;

(b) all general intangibles, including, without limitation, all Intellectual Property;

(c) all goods, including, without limitation, Inventory and Equipment;

(d) all chattel paper, including, without limitation, all tangible and electronic chattel paper;

(e) all instruments, including, without limitation, all promissory notes;

(f) all documents;

(g) all deposit accounts;

(h) all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;

(i) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Collateral, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (iii) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other Collateral, including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors;

(j) all (i) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (ii) monies, credit balances, deposits and other property of any Loan Party now or hereafter held or received by or in transit to Agent, any Lender or its Affiliates or at any other depository or other institution from or for the account of any Loan Party, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(k) all commercial tort claims, including, without limitation, those identified in the Information Certificate;

(l) to the extent not otherwise described above, all Receivables;

(m) all Records; and

(n) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

Notwithstanding anything to the contrary contained in this Section 5.1, ~~(a)~~ the Collateral ~~consisting of~~shall not include any of the following (collectively the "Excluded Property") (a) Capital Stock of any Foreign Subsidiary of any Loan Party ~~shall not exceed~~to the extent in excess of sixty five (65%) percent of the issued and outstanding Capital Stock of such Foreign Subsidiary, ~~and~~ (b) ~~the types or items of Collateral described in this Section 5.1 shall not include (i)~~ any Excluded Assets, (~~ii~~c) any rights or interest in any contract, lease, permit, license, charter or license agreement covering real or personal property of a Loan Party, as such, if under the items of such contract, lease, permit, license, charter or license agreement, or applicable law with respect thereto, the valid grant of a security interest or lien therein to Agent is prohibited and such prohibition has not been or is not waived or the consent of the other party to such contract, lease, permit, license, charter or license agreement has not been or is not otherwise obtained; provided, that, the foregoing exclusion shall in no way be construed (~~A~~i) to apply if any such prohibition is unenforceable under the UCC or other applicable law or (~~B~~ii) so as to limit, impair or otherwise affect Agent's unconditional continuing security interests in and liens upon any rights or interests of such Loan Party in or to monies due or to become due under such contract, lease, permit, license, charter or license agreement (including any Receivables), or (~~ii~~d) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability, or result in the abandonment, voiding or cancellation, of such intent-to-use trademark applications under applicable federal law, provided, that upon submission and acceptance by the United Stated Patent and Trademark Office of an amendment to allege use pursuant to 15 U.S.C. Section 1051(c) or (d) (or any successor provisions), such intent-to-use trademark application shall be considered Collateral hereunder; provided, further, that, none of the foregoing assets shall constitute Excluded Property to the extent such assets secure any Indebtedness permitted under Section 9.9(h).

5.2 Perfection of Security Interests.

(a) Each Loan Party irrevocably and unconditionally authorizes Agent (or its agent) to file at any time and from time to time such financing statements with respect to the Collateral naming Agent or its designee as the secured party and such Loan Party as debtor, as Agent may require, and including any other information with respect to such Loan Party or otherwise required by part 5 of Article 9 of the Uniform Commercial Code of such jurisdiction as Agent may determine, together with any amendment and continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the date hereof. Each Loan Party hereby authorizes and agrees that any such financing statements may indicate the collateral as "all assets of the debtor, whether now owned or hereafter acquired or existing", "all personal property of the debtor, whether now owned or hereafter acquired or existing" or words of similar effect and/or meaning. Each Loan Party hereby ratifies and approves all financing statements naming Agent or its designee as secured party and such Loan Party, as the case may be, as debtor with respect to the Collateral (and any amendments with respect to such financing statements) filed by or on behalf of Agent prior to the date hereof and ratifies and confirms the authorization of Agent to file such financing statements (and amendments, if any). Each Loan Party hereby authorizes Agent to adopt on behalf of such Loan Party any symbol required for authenticating any electronic filing. In the event that the description of the collateral in any financing statement naming Agent or its designee as the secured party and any Loan Party as debtor includes assets and properties of such Loan Party that do not at any time constitute Collateral, whether hereunder, under any of the other Financing Agreements or otherwise, the filing of such financing statement shall nonetheless be deemed authorized by such Loan Party to the extent of the Collateral included in such description and it shall not render the financing statement ineffective as to any of the Collateral or otherwise affect the financing statement as it applies to any of the Collateral. In no event shall any Loan Party at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) naming Agent or its designee as secured party and such Loan Party as debtor.

(b) Each Loan Party does not have any chattel paper (whether tangible or electronic) or instruments as of the Amendment No. 3 Effective Date, except as set forth in the Information Certificate. In the event that any Loan Party shall be entitled to or shall receive any chattel paper or instrument after the date hereof with a value in excess of $500,000 individually or $1,000,000 in the aggregate (or, upon the request of Agent, if an Event of Default has occurred and is continuing, then with any value), Loan Parties shall promptly notify Agent thereof in writing. Promptly upon the receipt thereof by or on behalf of any Loan Party (including by any agent or representative), such Loan Party shall deliver, or cause to be delivered to Agent, all tangible chattel paper and instruments that such Loan Party has or may at any time acquire, accompanied by such instruments of transfer or assignment duly executed in blank as Agent may from time to time specify, in each case except as Agent may otherwise agree. At Agent's option, each Loan Party shall, or Agent may at any time on behalf of any Loan Party, cause the original of any such instrument or chattel paper to be conspicuously marked in a form and manner acceptable to Agent with the following legend (or such other legend acceptable to Agent) referring to chattel paper or instruments as applicable: "This [chattel paper][instrument] is subject to the security interest of Wells Fargo Capital Finance, LLC, as Agent and any sale, transfer, assignment or encumbrance of this [chattel paper][instrument] violates the rights of such secured party."

(c) In the event that any Loan Party shall at any time hold or acquire an interest in any electronic chattel paper or any "transferable record" (as such term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction) with a value in excess of $500,000 individually or $1,000,000 in the aggregate (or, upon the request of Agent, if an Event of Default has occurred and is continuing, then with any value), such Loan Party shall promptly notify Agent thereof in writing. Promptly upon Agent's request, such Loan Party shall take, or cause to be taken, such actions as Agent may reasonably request to give Agent control of such electronic chattel paper under Section 9-105 of the UCC and control of such transferable record under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as in effect in such jurisdiction.

(d) Each Loan Party does not have any deposit accounts as of the Amendment No. 3 Effective Date, except as set forth in the Information Certificate. Loan Parties shall not after the date hereof open, establish or maintain any deposit account unless each of the following conditions is satisfied: (i) Agent shall have received not less than five (5) Business Days prior written notice (or such lesser period as Agent may agree) of the opening or establishment by any Loan Party of such account which notice shall specify in reasonable detail and specificity the name of the account, the owner of the account, the name and address of the bank at which such account is to be opened or established, the individual at such bank with whom such Loan Party is dealing and the purpose of the account, except as to any Store Account opened or established after the date hereof, so long as no Event of Default shall have occurred and be continuing, Agent shall only have received such information as to such Store Account on the next monthly report with respect to deposit accounts in accordance with Section 7.1(a) hereof, (ii) the bank where such account is opened or maintained shall be a Lender or shall otherwise be acceptable to Agent (and Agent hereby acknowledges that any bank at which a deposit account is maintained on the Amendment No. 3 Effective Date as set forth in the Information Certificate is acceptable to Agent), and (iii) on or before the opening of such deposit account (other than a Store Account or a disbursement account so long as no Event or Default shall exist or have occurred and be continuing or so long as such Store Account or disbursement account is not maintained at a bank which also maintains a collection, lockbox or concentration account of a Loan Party) such Loan Party shall deliver to Agent a Deposit Account Control Agreement with respect to such deposit account duly authorized, executed and delivered by such Loan Party and the bank at which such deposit account is opened and maintained. The terms of this subsection (d) shall not apply to escrow accounts, petty cash accounts, or deposit accounts specifically and exclusively used for lottery payments, payroll, payroll taxes, workers compensation insurance payments and other employee wage and benefit payments to or for the benefit of any Loan Party's salaried employees or deposit accounts specifically and exclusively used for amounts subject to the Liens permitted under Section 9.8(g) hereof.

(e) No Loan Party (i) owns or holds beneficially or as record owner or both, any investment property, as of the Amendment No. 3 Effective Date (other than any investment property held in an account described in clause (ii) of this sentence), or (ii) has any investment account, securities account, commodity account or other similar account with any bank or other financial institution or other securities intermediary or commodity intermediary as of the Amendment No. 3 Effective Date, in each case except as set forth in the Information Certificate.

(f) In the event that any Loan Party shall be entitled to or shall at any time after the date hereof hold or acquire any certificated securities (other than securities consisting of Excluded Assets or consisting of Capital Stock of any Excluded Subsidiary), such Loan Party shall promptly endorse, assign and deliver the same to Agent (or, if such certificated securities constitute Term Loan Priority Collateral, the Term Agent as gratuitous bailee for, and on behalf of, the Agent), accompanied by such instruments of transfer or assignment duly executed in blank as Agent may from time to time specify. If any securities (other than securities consisting of Excluded Assets or consisting of Capital Stock of any Excluded Subsidiary), now or hereafter acquired by any Loan Party are uncertificated and are issued to such Loan Party or its nominee directly by the issuer thereof, such Loan Party shall promptly notify Agent thereof and shall as Agent may specify, either (A) cause the issuer to agree to comply with instructions from Agent (or, if such securities constitute Term Loan Priority Collateral, the Term Agent as gratuitous bailee for, and on behalf of, the Agent) as to such securities, without further consent of any Loan Party or such nominee, or (B) arrange for Agent (or, if such securities constitute Term Loan Priority Collateral, the Term Agent as gratuitous bailee for, and on behalf of, the Agent) to become the registered owner of the securities.

(g) Loan Parties shall not after the date hereof open, establish or maintain any investment account, securities account, commodity account or any other similar account with any securities intermediary or commodity intermediary unless each of the following conditions is satisfied: (A) Agent shall have received not less than five (5) Business Days prior written notice (or such lesser period as Agent may agree) of the opening or establishment by such Loan Party of such account, which notice shall specify in reasonable detail and specificity the name of the account, the owner of the account, the name and address of the securities intermediary or commodity intermediary at which such account is to be opened or established, the individual at such intermediary with whom such Loan Party is dealing and the purpose of the account, (B) the securities intermediary or commodity intermediary (as the case may be) where such account is opened or maintained shall be a Lender or shall otherwise be acceptable to Agent, and (C) on or before the opening of such investment account, securities account or other similar account with a securities intermediary or commodity intermediary, such Loan Party shall as Agent may specify either (1) execute and deliver, and cause to be executed and delivered to Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by such Loan Party and such securities intermediary or commodity intermediary or (2) arrange for Agent to become the entitlement holder with respect to such investment property on terms and conditions acceptable to Agent, in each case, subject to the Intercreditor Agreement.

(h) Loan Parties are not the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the Amendment No. 3 Effective Date with a value in excess of $500,000 individually or $1,000,000 in the aggregate, except as set forth in the Information Certificate. In the event that any Loan Party shall be entitled to or shall receive any right to payment under any letter of credit, banker's acceptance or any similar instrument with a value in excess of $500,000 individually or $1,000,000 in the aggregate (or, upon the request of Agent, if an Event of Default has occurred and is continuing, then with any value), whether as beneficiary thereof or otherwise after the date hereof, such Loan Party shall promptly notify Agent thereof in writing. Such Loan Party shall promptly, as Agent may specify, either (i) deliver, or use commercially reasonable efforts to cause to be delivered to Agent (or, if such rights to payment constitute Term Loan Priority Collateral, the Term Agent as gratuitous bailee for, and on behalf of, the Agent), with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance reasonably satisfactory to Agent, consenting to the assignment of the proceeds of the letter of credit to Agent by such Loan Party and agreeing to make all payments thereon directly to Agent or as Agent may otherwise direct or (ii) cause Agent (or, if such rights to payment constitute Term Loan Priority Collateral, the Term Agent as gratuitous bailee for, and on behalf of, the Agent) to become, at Borrowers' expense, the transferee beneficiary of the letter of credit, banker's acceptance or similar instrument (as the case may be).

(i) Loan Parties do not have any commercial tort claims as of the Amendment No. 3 Effective Date, except as set forth in the Information Certificate. In the event that any Loan Party shall at any time after the date hereof have any commercial tort claims with a value in excess of $500,000 individually or $1,000,000 in the aggregate (or, upon the request of Agent, if an Event of Default has occurred and is continuing, then with any value) that arise in connection with or relate to any assets which are included in the calculation of the Borrowing Base, such Loan Party shall promptly notify Agent thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such commercial tort claim and (ii) include the express grant by such Loan Party to Agent of a security interest in such commercial tort claim (and the proceeds thereof). In the event that such notice does not include such grant of a security interest, the sending thereof by such Loan Party to Agent shall be deemed to constitute such grant to Agent. Upon the sending of such notice, any commercial tort claim described therein shall constitute part of the Collateral and shall be deemed included therein. Without limiting the authorization of Agent provided in Section 5.2(a) hereof or otherwise arising by the execution by such Loan Party of this Agreement or any of the other Financing Agreements, Agent is hereby irrevocably authorized from time to time and at any time to file such financing statements naming Agent or its designee as secured party and such Loan Party as debtor, or any amendments to any financing statements, covering any such commercial tort claim as Collateral. In addition, each Loan Party shall promptly upon Agent's request, execute and deliver, or cause to be executed and delivered, to Agent such other agreements, documents and instruments as Agent may require in connection with such commercial tort claim.

(j) Loan Parties do not have any Inventory (excluding Inventory consisting of fuel and located at a leased terminal) with a value in excess of $500,000 in the aggregate in the custody, control or possession of a third party (other than Agent) as of the Amendment No. 3 Effective Date, except for (w) locations set forth in the Information Certificate, (x) Inventory located in the United States in transit to a location of a Loan Party permitted herein in the ordinary course of business of such Loan Party in the possession of the Person transporting such Inventory, (y) new locations opened after the date hereof pursuant to Section 9.2 hereof, and (z) any other locations, so long as, in the case of this clause (z), such Loan Party provides Agent with written notice thereof within fifteen (15) Business Days following the end of the month in which such location is established or otherwise used. Subject to Section 9.2 hereof, in the event that any Inventory (other than Inventory consisting of fuel located at leased terminals) with a value in excess of $500,000 in the aggregate (or, upon the request of Agent, if an Event of Default has occurred and is continuing, then with any value) is at any time after the Amendment No. 3 Effective Date in the custody, control or possession of any other person (other than Agent) not referred to in the Information Certificate or in transit as described above or disclosed to Agent pursuant to Section 9.2 hereof, Loan Parties shall notify Agent thereof in writing within fifteen (15) Business Days following the end of the month in which such Inventory is in the custody, control or possession of such other person or in transit as described above or such other location, and such Inventory shall not constitute Eligible Inventory unless the criteria for Eligible Inventory (as the case may be) have been satisfied. Promptly upon Agent's request, Loan Parties shall use commercially reasonable efforts to deliver to Agent a Collateral Access Agreement duly authorized, executed and delivered by such person and the Loan Party that is the owner of such Inventory, except that Loan Parties shall not be required to use such efforts to deliver a Collateral Access Agreement with respect to a retail store location opened after the date hereof unless such retail store location is leased from HPT or any of its Affiliates.

(k) Subject to the exceptions and limitations set forth herein and in the other Financing Agreements, Loan Parties shall take any other actions reasonably requested by Agent from time to time to cause the attachment, perfection and first priority of, and the ability of Agent to enforce, the security interest of Agent in any and all of the Collateral, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any, that any Loan Party's signature thereon is required therefore, (ii) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Agent to enforce, the security interest of Agent in such Collateral, and (iii) using commercially reasonable efforts to obtain the required consents and approvals of any Governmental Authority or third party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, and taking all actions required by applicable law.

(l) Notwithstanding anything herein to the contrary, with respect to the Term Loan Priority Collateral until the Discharge of Term Loan Debt, any obligation of the Loan Parties hereunder or under any other Financing Agreement with respect to the delivery of, possession of, or granting control over, any Term Loan Priority Collateral for purposes of perfection, shall be deemed to be satisfied if the Loan Parties comply with the requirements of the similar provision of the applicable Term Loan Documents.

SECTION 6. COLLECTION AND ADMINISTRATION

6.1 Borrowers' Loan Accounts. Agent shall maintain one or more loan account(s) on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with (a) all Loans, Letters of Credit and other Obligations and the Collateral, (b) all payments made by or on behalf of any Loan Party, and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the Loan Account shall be made in accordance with Agent's customary practices as in effect from time to time.

6.2 Statements. Agent shall render to Administrative Borrower each month a statement setting forth the balance in the Loan Account maintained by Agent for Borrowers pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall, absent manifest errors or omissions, be conclusively binding upon Loan Parties as an account stated except to the extent that Agent receives a written notice from Administrative Borrower of any specific exceptions of Administrative Borrower thereto within sixty (60) days after the date such statement has been received by Administrative Borrower. Until such time as Agent shall have rendered to Administrative Borrower a written statement as provided above, the balance in the Loan Account shall be presumptive evidence of the amounts due and owing to Agent and Lenders by Loan Parties.

6.3 Collection of Accounts.

(a) Each Loan Party shall establish and maintain, at its expense, deposit account arrangements and merchant payment arrangements with the banks set forth on Schedule 8.10 to the Information Certificate and, subject to Section 5.2(d) hereof, such other banks as such Loan Party may hereafter select. The banks set forth on Schedule 8.10 to the Information Certificate constitute all of the banks with which Loan Parties have deposit account arrangements and merchant payment arrangements as of the Amendment No. 3 Effective Date and identifies as of the Amendment No. 3 Effective Date each of the deposit accounts at such banks that are used solely for receiving store receipts from a retail store location of a Borrower (together with any other deposit accounts at any time established or used by any Borrower for receiving such store receipts from any retail store location, collectively, the "Store Accounts" and each individually, a "Store Account") or otherwise describes the nature of the use of such deposit account by such Borrower.

(b) Each Borrower shall deposit all proceeds of Collateral in the form of cash, cash equivalents, checks and other items of payment of a type ordinarily deposited into a deposit account from each retail store location of such Borrower on each Business Day (in the case of checks and other items of payment) or within two (2) Business Days (in the case of cash or cash equivalents) into the Store Account of such Borrower used solely for such purpose; provided, that, the retail stores of Borrowers shall be permitted to retain cash at such retail stores in an aggregate amount as to all such retail stores equal to the product of $60,000 multiplied by the number of such retail stores, immediately after giving effect to the deposit of funds from such store into the applicable Store Account. All such available funds deposited into the Store Accounts shall be sent by wire transfer or other electronic funds transfer on each Business Day to the Blocked Accounts as provided in Section 6.3(c), except for amounts required to be maintained in such Store Accounts under the terms of such Borrower's arrangements with the bank at which such Store Accounts are maintained (which amounts in all such Store Accounts in the aggregate shall not at any time exceed the product of $40,000 multiplied by the number of the retail stores of Borrowers). Without duplication of the provisions of the last sentence of subsections (c) and (e) of this Section 6.3, the provisions of this subsection (b) shall not apply to any amounts required to be deposited into deposit accounts specifically and exclusively used for lottery payments.

(c) Each Borrower shall establish and maintain, at its expense, deposit accounts with a Bank Product Provider (the "Blocked Accounts") into which each Borrower shall promptly either cause all amounts on deposit in the Store Accounts of such Borrower to be sent as provided in Section 6.3(b) above or shall itself deposit or cause to be deposited all proceeds of Collateral (other than, for so long as the Intercreditor Agreement is in effect, Term Loan Priority Collateral) received by such Borrower in the form of cash, cash equivalents, checks and other items of payment of a type ordinarily deposited into a deposit account, including without limitation all proceeds from sales of Inventory and all amounts paid to each Borrower from Credit Card Issuers and Credit Card Processors (it being understood that the banks listed on Schedule 8.10 to the Information Certificate are acceptable to Agent for purposes of this Section). Loan Parties shall deliver, or cause to be delivered to Agent a Deposit Account Control Agreement duly authorized, executed and delivered by each bank where a Blocked Account is maintained as provided in Section 5.2 hereof. At any time an Event of Default shall have occurred and be continuing, promptly upon Agent's request, Loan Parties shall deliver, or cause to be delivered, to Agent a Deposit Account Control Agreement duly authorized, executed and delivered by such banks where a Store Account is maintained as Agent shall specify. Without limiting any other rights or remedies of Agent or Lenders, Agent may, at its option, and shall (upon the direction of the Required Lenders), instruct the depository banks at which the Blocked Accounts are maintained to transfer all available funds received or deposited into the Blocked Accounts to the Agent Payment Account at any time that a Cash Dominion Period exists. Without limiting any other rights or remedies of Agent or Lenders, in the event that a Deposit Account Control Agreement is in effect for a Store Account, then Agent may, at its option, and shall (upon the direction of the Required Lenders), instruct the depository bank at which the Store Account is maintained to transfer all available funds received or deposited into the Store Account to the Agent Payment Account at any time that an Event of Default shall have occurred and be continuing. At all times that Agent shall have notified any depository bank to transfer funds from a Blocked Account or Store Account to the Agent Payment Account, all payments made to such Blocked Accounts or Store Accounts, whether in respect of the Receivables, as proceeds of Inventory or other Collateral or otherwise (other than, for so long as the Intercreditor Agreement is in effect, Term Loan Priority Collateral or Specified Term Loan Collateral) shall be treated as payments to Agent in respect of the Obligations and therefore shall constitute the property of Agent and Lenders to the extent of the then outstanding Obligations. Without duplication of the provisions of the last sentence of subsections (b) and (e) of this Section 6.3, the provisions of this subsection (c) shall not apply to any amounts required to be deposited into deposit accounts specifically and exclusively used for lottery payments.

(d) For purposes of calculating the amount of the Loans available to each Borrower, all payments received in the Agent Payment Account by 1:30 p.m. Chicago, Illinois time will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt by Agent of immediately available funds in the Agent Payment Account, and if received in the Agent Payment Account on any Business Day after 1:30 p.m. Chicago, Illinois time, then on the next Business Day. For the purposes of calculating interest on the Obligations, such payments or other funds received will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt of immediately available funds by Agent in the Agent Payment Account provided such payments or other funds are received in the Agent Payment Account by 1:30 p.m. Chicago, Illinois time, and if received in the Agent Payment Account on any Business Day after 1:30 p.m. Chicago, Illinois time, then on the next Business Day.

(e) Each Loan Party and their respective Subsidiaries shall, acting as trustee for Agent, receive all cash, cash equivalents, checks and other items of payment of a type ordinarily deposited into a deposit account relating to and/or proceeds of Collateral which come into their possession or under their control and promptly upon receipt thereof shall deposit or cause the same to be deposited in the Store Accounts or the Blocked Accounts in accordance with (and subject to the exceptions contained in) Sections 6.3(b) and (c) hereof and the last sentence of Section 5.2(d) hereof. In no event shall the same be commingled with any funds of any Loan Party which do not constitute Collateral (other than funds which constitute the proceeds of lottery payments). Borrowers agree to reimburse Agent on demand for any amounts owed or paid to any bank or other financial institution at which a Blocked Account or any other deposit account or investment account is established or any other bank, financial institution or other person involved in the transfer of funds to or from the Blocked Accounts arising out of Agent's payments to or indemnification of such bank, financial institution or other person. The obligations of Borrowers to reimburse Agent for such amounts pursuant to this Section 6.3 shall survive the termination of this Agreement. Without duplication of the provisions of the last sentence of subsections (b) and (c) of this Section 6.3, the provisions of this subsection (e) shall not apply to any amounts required to be deposited into deposit accounts specifically and exclusively used for lottery payments.

6.4 Payments.

(a) All Obligations shall be payable to the Agent Payment Account as provided in Section 6.3 or such other place as Agent may designate from time to time. Subject to the other terms and conditions contained herein, Agent shall apply payments received or collected from any Loan Party or for the account of any Loan Party (including the monetary proceeds of collections or of realization upon any Collateral) as follows: first, to pay any fees, indemnities or expense reimbursements then due to Agent and Lenders from any Loan Party; second, to pay interest due in respect of any Loans (and including any Special Agent Advances); third, to pay or prepay principal in respect of Special Agent Advances; fourth, on a pro rata basis, to the payment or prepayment of principal in respect of the Revolving Loans then due and to the payment or prepayment of Obligations then due arising under or pursuant to any Hedge Agreement (but, as to Obligations arising under or pursuant to any Hedge Agreement, only up to the amount of any effective Reserve established in respect of such Obligations); fifth, to pay or prepay any other Obligations (but excluding for this clause fifth any Obligations arising under or pursuant to Bank Products) whether or not then due, in such order and manner as Agent determines and, at any time an Event of Default has occurred and is continuing, to be held as cash collateral in connection with any Letter of Credit; sixth, to pay Obligations arising under or pursuant to any Bank Product (other than to the extent provided for above) on a pro rata basis, and seventh, to Administrative Borrower or such other Person entitled thereto under applicable law. So long as no Default or Event of Default shall have occurred and be continuing, the immediately preceding sentence shall not be deemed to apply to any payment by Borrowers specified by Administrative Borrower to be for the payment of the principal of or interest on any of the Loans. Notwithstanding anything to the contrary contained in this Agreement, (i) unless so directed by Administrative Borrower, or unless a Default or an Event of Default shall have occurred and be continuing, Agent shall not apply any payments which it receives to any Eurodollar Rate Loans, except (A) on the expiration date of the Interest Period applicable to any such Eurodollar Rate Loans or (B) in the event that there are no outstanding Base Rate Loans and (ii) to the extent any Borrower uses any proceeds of the Loans or Letters of Credit to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, payments in respect of the Obligations shall be deemed applied first to the Obligations arising from Loans and Letters of Credit that were not used for such purposes and second to the Obligations arising from Loans and Letters of Credit the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which such Borrower acquired such rights in or the use of such Collateral.

(b) At Agent's option, all principal, interest, fees and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the Loan Account of any Borrower maintained by Agent, and subject to Section 9.20 hereof, all costs and expenses provided for in this Agreement or the other Financing Agreements may be charged directly to the Loan Account of any Borrower maintained by Agent. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by Agent or such Lender. Loan Parties shall be liable to pay to Agent, and do hereby indemnify and hold Agent and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4(b) shall remain effective notwithstanding any contrary action which may be taken by Agent or any Lender in reliance upon such payment or proceeds. This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.

6.5 Authorization to Make Loans. Agent and Lenders are authorized to make the Loans and provide the Letters of Credit based upon telephonic or other instructions (which may be delivered through Agent's electronic platform or portal) received from anyone purporting to be an officer of Administrative Borrower or any Borrower or other authorized person or, at the discretion of Agent, if such Loans are necessary to satisfy any Obligations then due and payable. All requests for Loans or Letters of Credit hereunder shall specify the date on which the requested advance is to be made or Letters of Credit established (which day shall be a Business Day) and the amount of the requested Loan. Requests received after 12:00 noon Chicago, Illinois time on any day shall be deemed to have been made as of the opening of business on the immediately following Business Day. All Loans and Letters of Credit under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, any Loan Party when deposited to the credit of any Loan Party or otherwise disbursed or established in accordance with the instructions of any Loan Party or in accordance with the terms and conditions of this Agreement. All requests for Loans or Letters of Credit which are not made on-line via Agent's electronic platform or portal shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Loans or Letters of Credit shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Loan or Letter of Credit.

6.6 Use of Proceeds. All Loans made or Letters of Credit provided to or for the benefit of any Borrower pursuant to the provisions hereof shall be used by such Borrower only for general operating, working capital, and other proper corporate purposes of any Loan Party not otherwise prohibited by the terms hereof (including, without limitation, to pay fees and expenses incurred in connection with this Agreement and the other Financing Agreements). None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock or for the purposes of reducing or retiring any indebtedness which was originally incurred to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended. No part of the proceeds of any Loan or Letters of Credit will be used, directly or indirectly, (a) 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, or (b) 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.

6.7 Appointment of Administrative Borrower as Agent for Requesting Loans and Receipts of Loans and Statements.

(a) Each Borrower hereby irrevocably appoints and constitutes Administrative Borrower as its agent to request and receive Loans and Letters of Credit pursuant to this Agreement and the other Financing Agreements from Agent or any Lender in the name or on behalf of such Borrower. Agent and Lenders may disburse the Loans to such bank account of Administrative Borrower or a Borrower or otherwise make such Loans to a Borrower and provide such Letters of Credit to a Borrower as Administrative Borrower may designate or direct, without notice to any other Borrower or Obligor. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Administrative Borrower hereby accepts the appointment by Borrowers to act as the agent of Borrowers pursuant to this Section 6.7. Administrative Borrower shall ensure that the disbursement of any Loans to each Borrower requested by or paid to or for the account of Parent, or the issuance of any Letters of Credit for a Borrower hereunder, shall be paid to or for the account of such Borrower.

(c) Each Loan Party hereby irrevocably appoints and constitutes Administrative Borrower as its agent to receive statements on account and all other notices from Agent and Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Agreements.

(d) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any other Loan Party by Administrative Borrower shall be deemed for all purposes to have been made by such Loan Party, as the case may be, and shall be binding upon and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.

(e) No purported termination of the appointment of Administrative Borrower as agent as aforesaid shall be effective, except after ten (10) days' prior written notice to Agent.

6.8 Pro Rata Treatment. Except to the extent otherwise provided in this Agreement: (a) the making and conversion of Loans shall be made among the Lenders based on their respective Pro Rata Shares as to the Loans and (b) each payment on account of any Obligations to or for the account of one or more of Lenders in respect of any Obligations due on a particular day shall be allocated among the Lenders entitled to such payments based on their respective Pro Rata Shares and shall be distributed accordingly.

6.9 Sharing of Payments, Etc.

(a) Each Loan Party agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim Agent or any Lender may otherwise have, each Lender shall be entitled, at its option (but subject, as among Agent and Lenders, to the provisions of Section 12.3(b) hereof), to offset balances held by it for the account of such Loan Party at any of its offices, in dollars or in any other currency, against any principal of or interest on any Loans owed to such Lender or any other amount payable to such Lender hereunder, that is not paid when due (regardless of whether such balances are then due to such Loan Party), in which case it shall promptly notify Administrative Borrower and Agent thereof; provided, that, such Lender's failure to give such notice shall not affect the validity thereof.

(b) If any Lender (including Agent) shall obtain from any Loan Party payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any of the other Financing Agreements through the exercise of any right of setoff, banker's lien or counterclaim or similar right or otherwise (other than as provided herein), and, as a result of such payment, such Lender shall have received more than its Pro Rata Share of the principal of the Loans or more than its share of such other amounts then due hereunder or thereunder by any Loan Party to such Lender than the percentage thereof received by any other Lender, it shall promptly pay to Agent, for the benefit of Lenders, the amount of such excess and simultaneously purchase from such other Lenders a participation in the Loans or such other amounts, respectively, owing to such other Lenders (or such interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) in accordance with their respective Pro Rata Shares or as otherwise agreed by Lenders. To such end all Lenders shall make appropriate adjustments among themselves (by the resale of participation sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) Each Loan Party agrees that any Lender purchasing a participation (or direct interest) as provided in this Section may exercise, in a manner consistent with this Section, all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any right of setoff, banker's lien, counterclaims or similar rights or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of any Loan Party. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, assign such rights to Agent for the benefit of Lenders and, in any event, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

6.10 Settlement Procedures.

(a) In order to administer the Credit Facility in an efficient manner and to minimize the transfer of funds between Agent and Lenders, Agent shall (so long as the aggregate amount of Revolving Loans since the last day of the immediately preceding Settlement Period plus the amount of the requested Revolving Loans does not exceed $25,000,000) and otherwise Agent may, at its option, in any case subject to the terms of this Section, make available, on behalf of Lenders and in accordance with the terms of this Agreement, the full amount of the Loans requested or charged to any Borrower's Loan Account or otherwise to be advanced by Lenders pursuant to the terms hereof, without requirement of prior notice to Lenders of the proposed Loans.

(b) With respect to all Loans made by Agent on behalf of Lenders as provided in this Section, the amount of each Lender's Pro Rata Share of the outstanding Loans shall be computed weekly, and shall be adjusted upward or downward on the basis of the amount of the outstanding Loans as of 5:00 p.m. Chicago, Illinois time on the Business Day immediately preceding the date of each settlement computation; provided, that, Agent retains the absolute right at any time or from time to time to make the above described adjustments at intervals more frequent than weekly, but in no event more than twice in any week. Agent shall deliver to each of the Lenders after the end of each week, or at such lesser period or periods as Agent shall determine, a summary statement of the amount of outstanding Loans for such period (such week or lesser period or periods being hereinafter referred to as a "Settlement Period"). If the summary statement is sent by Agent and received by a Lender prior to 12:00 noon Chicago, Illinois time, then such Lender shall make the settlement transfer described in this Section by no later than 3:00 p.m. Chicago, Illinois time on the same Business Day and if received by a Lender after 12:00 noon Chicago, Illinois time, then such Lender shall make the settlement transfer by not later than 3:00 p.m. Chicago, Illinois time on the next Business Day following the date of receipt. If, as of the end of any Settlement Period, the amount of a Lender's Pro Rata Share of the outstanding Loans is more than such Lender's Pro Rata Share of the outstanding Loans as of the end of the previous Settlement Period, then such Lender shall forthwith (but in no event later than the time set forth in the preceding sentence) transfer to Agent by wire transfer in immediately available funds the amount of the increase. Alternatively, if the amount of a Lender's Pro Rata Share of the outstanding Loans in any Settlement Period is less than the amount of such Lender's Pro Rata Share of the outstanding Loans for the previous Settlement Period, Agent shall forthwith transfer to such Lender by wire transfer in immediately available funds the amount of the decrease. The obligation of each of the Lenders to transfer such funds and effect such settlement shall be irrevocable and unconditional and without recourse to or warranty by Agent. Agent and each Lender agrees to mark its books and records at the end of each Settlement Period to show at all times the dollar amount of its Pro Rata Share of the outstanding Loans and Letters of Credit. Each Lender shall only be entitled to receive interest on its Pro Rata Share of the Loans to the extent such Loans have been funded by such Lender. Because the Agent on behalf of Lenders may be advancing and/or may be repaid Loans prior to the time when Lenders will actually advance and/or be repaid such Loans, interest with respect to Loans shall be allocated by Agent in accordance with the amount of Loans actually advanced by and repaid to each Lender and the Agent and shall accrue from and including the date such Loans are so advanced to but excluding the date such Loans are either repaid by Borrowers or actually settled with the applicable Lender as described in this Section.

(c) To the extent that Agent has made any such amounts available and the settlement described above shall not yet have occurred, upon repayment of any Loans by a Borrower, Agent may apply such amounts repaid directly to any amounts made available by Agent pursuant to this Section. In lieu of weekly or more frequent settlements, Agent may, at its option, at any time require each Lender to provide Agent with immediately available funds representing its Pro Rata Share of each Loan, prior to Agent's disbursement of such Loan to Borrower. In such event, upon receipt by Agent of any request to borrow Loans by a Borrower, Agent shall promptly notify each Lender thereof. In such event, (a) if a Lender receives notice of a Borrower's request to borrow a Base Rate Loan by 1:00 p.m. Chicago, Illinois time on any Business Day, such Lender shall make the amount of its Pro Rata Share of such Base Rate Loan available to Agent by 3:00 p.m. Chicago, Illinois time on such Business Day; provided, that, if a Lender receives notice of a Borrower's request to borrow Base Rate Loans after 1:00 p.m. Chicago, Illinois time on any Business Day, such Lender shall make the amount of its Pro Rata Share of such Base Rate Loan available to Agent by 1:00 p.m. Chicago, Illinois time on the next succeeding Business Day, and (b) if a Lender receives notice of a Borrower's request to borrow a Eurodollar Rate Loan by 5:00 p.m. Chicago, Illinois time on any Business Day, such Lender shall make the amount of its Pro Rata Share of such Eurodollar Rate Loan available to Agent by 1:00 p.m. Chicago, Illinois time on the third Business Day following the receipt by such Lender of such notice; provided, that, if a Lender receives notice of a Borrower's request to borrow a Eurodollar Rate Loan after 5:00 p.m. Chicago, Illinois time on any Business Day, such Lender shall make the amount of its Pro Rata Share of such Eurodollar Rate Loan available to Agent by 1:00 p.m. Chicago, Illinois time on the fourth Business Day following the receipt by such Lender of such notice. No Lender shall be responsible for any default by any other Lender in the other Lender's obligation to make a Loan requested hereunder nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in the other Lender's obligation to make a Loan hereunder.

(d) If Agent is not funding a particular Loan to a Borrower (or Administrative Borrower for the benefit of such Borrower) pursuant to Sections 6.10(a) and 6.10(b) above on any day, but is requiring each Lender to provide Agent with immediately available funds on the date of such Loan as provided in Section 6.10(c) above, Agent may assume that each Lender will make available to Agent such Lender's Pro Rata Share of the Loan requested or otherwise made on such day and Agent may, in its discretion, but shall not be obligated to, cause a corresponding amount to be made available to or for the benefit of such Borrower on such day. If Agent makes such corresponding amount available to a Borrower and such corresponding amount is not in fact made available to Agent by such Lender, Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at Agent's option based on the arithmetic mean determined by Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (Chicago, Illinois time) on that day by each of the three leading brokers of Federal funds transactions in Chicago, Illinois selected by Agent) and if such amounts are not paid within three (3) days of Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Base Rate Loans. During the period in which such Lender has not paid such corresponding amount to Agent, notwithstanding anything to the contrary contained in this Agreement or any of the other Financing Agreements, the amount so advanced by Agent to or for the benefit of any Borrower shall, for all purposes hereof, be a Loan made by Agent for its own account. Upon any such failure by a Lender to pay Agent, Agent shall promptly thereafter notify Administrative Borrower of such failure and Borrowers shall pay such corresponding amount to Agent for its own account within five (5) Business Days of Administrative Borrower's receipt of such notice. Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder (including any principal, interest or fees). Amounts payable to a Defaulting Lender shall instead be paid to or retained by Agent. Agent may hold and, in its discretion, relend to a Borrower the amount of all such payments received or retained by it for the account of such Defaulting Lender. For purposes of voting or consenting to matters with respect to this Agreement and the other Financing Agreements and determining Pro Rata Shares, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero (0); provided, that, this provision shall not apply to the vote or consent of a Defaulting Lender in the case of the amendments and waivers described in clauses (i), (ii) and (vi) of Section 11.3(a) hereof. This Section shall remain effective with respect to a Defaulting Lender until such default is cured. The operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, or relieve or excuse the performance by any Borrower or Obligor of their duties and obligations hereunder.

(e) Nothing in this Section or elsewhere in this Agreement or the other Financing Agreements shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitment hereunder or to prejudice any rights that any Borrower may have against any Lender as a result of any default by any Lender hereunder in fulfilling its Commitment.

6.11 Obligations Several; Independent Nature of Lenders' Rights. The obligation of each Lender hereunder is several, and no Lender shall be responsible for the obligation or commitment of any other Lender hereunder. Nothing contained in this Agreement or any of the other Financing Agreements and no action taken by the Lenders pursuant hereto or thereto shall be deemed to constitute the Lenders to be a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and subject to Section 12.3 hereof, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

6.12 Bank Products. Loan Parties, or any of their Subsidiaries, may (but no such Person is required to) request that the Bank Product Providers provide or arrange for such Person to obtain Bank Products from Bank Product Providers, and each Bank Product Provider may, in its sole discretion, provide or arrange for such Person to obtain the requested Bank Products. This Section 6.12 shall survive the payment of the Obligations and the termination of this Agreement. Loan Parties and their respective Subsidiaries acknowledge and agree that the obtaining of Bank Products from Bank Product Providers (a) is in the sole discretion of such Bank Product Provider, and (b) is subject to all rules and regulations of such Bank Product Provider. Each Bank Product Provider shall be deemed a party hereto for purposes of any reference in a Financing Agreement to the parties for whom Agent is acting, provided, that, the rights of such Bank Product Provider hereunder and under any of the other Financing Agreements shall consist exclusively of such Bank Product Provider's right to share in payments and collections out of the Collateral as set forth herein. In connection with any such distribution of payments and collections, Agent shall be entitled to assume that no amounts are due to any Bank Product Provider unless such Bank Product Provider has notified Agent in writing of any such liability owed to it as of the date of any such distribution.

6.13 Tax Matters.

(a) Any and all payments by any Loan Party hereunder or under the other Financing Agreements shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings imposed by any Governmental Authority, and all liabilities with respect thereto, excluding (x) taxes imposed on (or measured by) the net income or franchise taxes of Agent or any Lender or Participant by the jurisdiction in which such Person is organized or has its principal office or, in the case of any Lender, by the jurisdiction in which its applicable lending office is located, (y) any branch profits taxes imposed by the United States of America or any other Governmental Authority or (z) any United States federal withholding taxes imposed as a result of Agent's, any Lender's or any Participant's failure or inability to comply with the requirements of Sections 1471 through 1474 of the Code or any regulations promulgated thereunder to establish an exemption from withholding tax thereunder (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities, collectively or individually, "Taxes"). If any Loan Party shall be required to deduct any Taxes from or in respect of any sum payable hereunder or under any other Financing Agreement to Agent or any Lender, (i) the sum payable shall be increased by the amount (an "additional amount") necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 6.13) Agent or such Lender shall receive an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, each Loan Party agrees to pay to the relevant Governmental Authority in accordance with applicable law any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any other Financing Agreement ("Other Taxes"). Each Loan Party shall deliver to Agent and each Lender official receipts in respect of any Taxes or Other Taxes payable hereunder promptly after payment of such Taxes or Other Taxes.

(c) Each Loan Party hereby indemnifies and agrees to hold Agent and each Lender harmless from and against Taxes and Other Taxes (including, without limitation, Taxes and Other Taxes imposed on any amounts payable under this Section 6.13) paid by such Person, whether or not such Taxes or Other Taxes were correctly or legally asserted. Such indemnification shall be paid within 10 days from the date on which any such Person makes written demand therefor specifying in reasonable detail the nature and amount of such Taxes or Other Taxes, which demand shall be conclusive and binding absent manifest error.

(d) United States Federal Withholding Tax Compliance Matters:

(i) Each Lender that is not a United States person under the Code (a "Non US Lender") agrees that it shall, no later than the date of this Agreement (or, in the case of a Lender which becomes a party hereto pursuant to Section 13.7 hereof after the date of this Agreement, promptly after the date upon which such Lender becomes a party hereto) deliver to the Agent two properly completed and duly executed copies of either United States Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY or any subsequent versions thereof or successors thereto, in each case, claiming complete exemption from, or reduced rate of, United States Federal withholding tax and payments of interest hereunder. In addition, in the case of a Non US Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Code, such Non US Lender hereby represents to the Agent and the Borrower that such Non US Lender is not a bank for purposes of Section 881(c) of the Code, is not a 10 percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of any Borrower and is not a controlled foreign corporation related to any Borrower (within the meaning of Section 864(d)(4) of the Code), and such Non US Lender agrees that it shall promptly notify the Agent in the event any such representation is no longer accurate. Such forms shall be delivered by each Non US Lender on or before the date it becomes a party to this Agreement and on or before the date, if any, such Non US Lender changes its applicable lending office by designating a different lending office (a "New Lending Office"). In addition, each Non US Lender shall deliver such forms within twenty (20) days after receipt of a written request therefor from Agent or the assigning Lender, as applicable. Upon the Administrative Borrower's written request, Agent shall deliver to the Administrative Borrower all such forms received by Agent to the date of such written request. Notwithstanding any other provision of this Section 6.13, a Non US Lender shall not be required to deliver any form pursuant to this Section 6.13 that such Non US Lender is not legally able to deliver.

(ii) Each Lender that is a United States person under the Code shall deliver to Agent two (2) properly completed and duly executed copies of U.S. Internal Revenue Service Form W-9 (or any successor form thereto) certifying that such Lender is exempt from U.S. backup withholding tax. Such forms shall be delivered by each such Lender on or before the date it becomes a party to this Agreement and thereafter within twenty (20) days after receipt of a written request therefor from any Agent. Upon Administrative Borrower's written request, Agent shall deliver to Administrative Borrower all such forms received by Agent to the date of such written request. Notwithstanding any other provision of this Section 6.13, a Lender described in this Section 6.13 shall not be required to deliver any form pursuant to this Section 6.13 that such Lender is not legally able to deliver.

(e) Notwithstanding anything contained herein to the contrary, Loan Parties shall not be required to indemnify any Non US Lender, or pay any additional amounts to any Non US Lender, in respect of U.S. Federal withholding tax pursuant to this Agreement or any other Financing Agreement to the extent that (i) the obligation to withhold amounts with respect to U.S. Federal withholding tax existed on the date such Non US Lender became a party to this Agreement or, with respect to payments to a New Lending Office, the date such Non US Lender designated such New Lending Office; provided, that this clause (i) shall not apply to the extent the indemnity payment or additional amounts any assignee or transferee of any Lender, or any Lender through a New Lending Office, would be entitled to receive (without regard to this clause (i)) do not exceed the indemnity payment or additional amounts that the person making the assignment or transfer to such assignee or transferee, or such Lender making the designation of such New Lending Office, would have been entitled to receive in the absence of such assignment, transfer or designation, or (ii) the obligation to pay such additional amounts would not have arisen but for a failure by such Non US Lender to comply with the provisions of clause (d) above (irrespective of such Non US Lender's legal ability to so comply). In addition, the Loan Parties shall not be required to indemnify or pay any additional amounts in respect of U.S. backup withholding tax to any Lender pursuant to this Agreement or any other Financing Agreement to the extent the obligation to pay such additional amounts would not have arisen but for a failure by such Lender to comply with the provisions of this Section 6.13 (irrespective of such Lender's legal ability to so comply).

(f) Agent or any Lender claiming any indemnity payment or additional payment amounts payable pursuant to this Section 6.13 shall use reasonable efforts (consistent with legal and regulatory restrictions) to file any certificate or document reasonably requested in writing by Administrative Borrower or to change the jurisdiction of its applicable lending office if the making of such a filing or change would avoid the need for or reduce the amount of any such indemnity payment or additional amount which may thereafter accrue, would not require Agent or such Lender to disclose any information Agent or such Lender deems confidential and would not, in the sole determination of Agent or such Lender, be otherwise disadvantageous to Agent or such Lender.

(g) If Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party pursuant to this Section or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided, that Loan Parties shall, promptly upon the request of Agent or any such Lender, repay the amount paid over to any Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Agent or any such Lender in the event Agent or any such Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party, or any other Person.

(h) The obligations of Loan Parties under this Section 6.13 shall survive the termination of this Agreement and the payment of the Obligations.

(i) If a payment made to a Lender under any Financing Agreement would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable due diligence and reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) 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 Agent (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding taxes under FATCA, from and after the effective date of this Agreement each Loan Party and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) the Financing Agreements as not qualifying as "grandfathered obligations" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

SECTION 7. COLLATERAL REPORTING AND COVENANTS

7.1 Collateral Reporting. Borrowers shall provide Agent with the following documents in a form satisfactory to Agent:

(i) as soon as possible after the end of (x) each calendar quarter (but in any event within fifteen (15) Business Days after the end thereof) if Excess Availability is equal to or greater than fifty (50%) percent of the Maximum Credit and the outstanding principal amount of the Revolving Loans and Letters of Credit is less than twenty (20%) percent of the Maximum Credit, (y) each calendar month (but in any event no later than fifteen (15) Business Days after the end thereof) if either (1) Excess Availability shall have fallen below the amount equal to fifty (50%) percent of the Maximum Credit or (2) the outstanding principal amount of Revolving Loans and Letters of Credit exceeds twenty (20%) percent of the Maximum Credit until such time thereafter that neither of the events described in clause (1) or (2) shall have occurred and been continuing for thirty (30) consecutive days, and (z) each week (but in any event within five (5) Business Days after the end thereof) if a Cash Dominion Period exists, or more frequently as Agent may request if an Event of Default has occurred and is continuing: (A) general ledger inventory reports with respect to such inventory or, to the extent available, perpetual inventory reports with respect to such inventory, (B) inventory reports by location and category (with the amounts and value of Perishable Inventory specified and including the amounts of Inventory and the value thereof at premises of warehouses, processors or other third parties excluding leased locations), (C) agings of accounts receivable, (D) accounts payable reports (and including information indicating the amounts owing to owners and lessors of leased premises, warehouses, and other third parties from time to time in possession of any Collateral), and (E) a Borrowing Base Certificate setting forth Administrative Borrower's calculation of the Revolving Loans and Letters of Credit available to Borrowers pursuant to the terms and conditions contained herein as of the last day of the immediately preceding period, duly completed and executed or authenticated by an authorized officer of Administrative Borrower, together with all schedules required pursuant to the terms of the Borrowing Base Certificate duly completed;

(ii) as soon as possible after the end of each month (but in any event within fifteen (15) Business Days after the end thereof), or as soon as possible at the end of each week (but in any event no later than five (5) Business Days after the end thereof), if a Cash Dominion Period exists, or more frequently as Agent may request if an Event of Default has occurred and is continuing, in each case certified by an authorized officer of Administrative Borrower as true and correct: (A) notification of any failure to make payment of rent and other amounts due to owners and lessors of real property used by any Loan Party in the immediately preceding month which would cause the aggregate amount of unpaid rent then due and other unpaid amounts then due to all owners and lessors of real property to exceed $500,000 in the aggregate, (B) the addresses of all new retail store locations and other new locations (including new warehouse locations) of Loan Parties opened and existing retail store locations closed or sold, in each case since the date of the most recent certificate delivered to Agent containing the information required under this clause, and (C) a summary of any new deposit account established or used by any Loan Party with any bank or other financial institution, including the Loan Party in whose name the account is maintained, the account number, the name and address of the financial institution at which such account is maintained and the purpose of such account; and

(iii) such other reports, documents and information as to the Collateral as Agent shall reasonably request from time to time.

(b) If any Loan Party's records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, such Loan Party hereby irrevocably authorizes such service, contractor, shipper or agent to deliver such records, reports, and related documents to Agent during the term of this Agreement and to follow Agent's instructions with respect to further services at any time that an Event of Default has occurred and is continuing.

(c) Nothing contained in any Borrowing Base Certificate shall be deemed to limit, impair or otherwise affect the rights of Agent contained herein and in the event of any conflict or inconsistency between the calculation of the Revolving Loans and Letters of Credit available to Borrowers as set forth in any Borrowing Base Certificate and as determined by Agent in accordance with the terms of this Agreement, the determination of Agent in its Permitted Discretion shall govern and be conclusive and binding upon Borrowers upon written notice thereof to Administrative Borrower. Without limiting the foregoing, Borrowers shall furnish to Agent any information which Agent may reasonably request regarding the determination and calculation of any of the amounts set forth in the Borrowing Base Certificate.

(d) Borrowers and Agent hereby agree that the delivery of the Borrowing Base Certificate through the Agent's electronic platform or portal or, subject to Agent's authentication process, by such other electronic method as may be approved by Agent from time to time in its sole discretion, or by such other electronic input of information necessary to calculate the Borrowing Base as may be approved by Agent from time to time in its sole discretion, shall in each case be deemed to satisfy the obligation of Borrowers to execute and deliver such Borrowing Base Certificate, with the same legal effect as if such Borrowing Base Certificate had been manually executed and delivered by Borrowers and delivered to Agent.

7.2 Accounts Covenants.

(a) Borrowers shall notify Agent promptly of: (i) any material delay in any Borrower's performance of any of its material obligations to any account debtor, Credit Card Issuer or Credit Card Processor which owes Borrowers more than $1,000,000 or the assertion of any material claims, offsets, defenses or counterclaims by any account debtor, Credit Card Issuer or Credit Card Processor which owes Borrowers more than $1,000,000, or any material disputes with any account debtor, Credit Card Issuers or Credit Card Processor which owes Borrowers more than $1,000,000, or any settlement, adjustment or compromise thereof, (ii) all material adverse information known to any Loan Party relating to the financial condition of any account debtor, Credit Card Issuers or Credit Card Processor which owes Borrowers more than $1,000,000 and (iii) any event or circumstance which, to the best of any Loan Party's knowledge, would cause Agent to consider any then existing Accounts as no longer constituting Eligible Accounts or Eligible Credit Card Receivables. No credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor, Credit Card Issuers or Credit Card Processor without Agent's consent, except in the ordinary course of a Loan Party's business in accordance with such Loan Party's existing practices and policies and except as set forth in the schedules delivered to Agent pursuant to Section 7.1(a) above. So long as no Event of Default has occurred and is continuing, Loan Parties shall settle, adjust or compromise any claim, offset, counterclaim or dispute with any account debtor, Credit Card Issuers or Credit Card Processor. At any time that an Event of Default has occurred and is continuing, upon notice to Administrative Borrower, Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with account debtors or grant any credits, discounts or allowances.

(b) With respect to each Account: (i) the amounts shown on any invoice delivered to Agent or schedule thereof delivered to Agent shall be true and complete in all material respects, (ii) no payments shall be made thereon except payments promptly remitted in accordance with the terms of this Agreement, (iii) no credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor, Credit Card Issuer or Credit Card Processor except as reported to Agent in accordance with this Agreement and except for credits, discounts, allowances or extensions made or given in the ordinary course of each Borrower's business in accordance with such Borrower's existing practices and policies, (iv) which consists of Eligible Accounts there shall be no setoffs, deductions, contras, defenses, counterclaims or disputes existing or asserted with respect thereto except as reported to Agent in accordance with the terms of this Agreement, (v) none of the transactions giving rise thereto will violate any applicable foreign, Federal, State or local laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations and all such documentation will be legally enforceable in accordance with its terms.

(c) Borrowers shall notify Agent promptly of: (i) any notice of a material default by any Loan Party under any of the Credit Card Agreements or of any default which has a reasonable likelihood of resulting in the Credit Card Issuer or Credit Card Processor ceasing to make payments or suspending payments to any Loan Party, (ii) any notice from any Credit Card Issuer or Credit Card Processor that such person is ceasing or suspending, or will cease or suspend, any present or future payments due or to become due to any Loan Party from such person, or that such person is terminating or will terminate any of the Credit Card Agreements, and (iii) the failure of any Loan Party to comply with any material terms of the Credit Card Agreements or any terms thereof which has a reasonable likelihood of resulting in the Credit Card Issuer or Credit Card Processor ceasing or suspending payments to any Loan Party.

(d) Agent shall have the right, in Agent's name (at any time during which an Event of Default shall have occurred and be continuing) or in the name of a nominee of Agent (at all other times), to verify the validity, amount or any other matter relating to any Receivables or other Collateral, by mail, telephone, facsimile transmission or otherwise.

7.3 Inventory Covenants. With respect to the Inventory: (a) each Loan Party shall at all times maintain inventory records reasonably satisfactory to Agent in substantially the same manner as being maintained on the date hereof (subject, however, to the terms of clause (o) of the definition of Eligible Inventory), keeping records correct and accurate in all material respects itemizing and describing the kind, type, quality and quantity of Inventory and such Loan Party's cost therefor; (b) Loan Parties shall conduct a physical count of the Inventory no less frequently than is consistent with the past practices of Loan Parties, but at any time or times as Agent may request upon the occurrence and during the continuance of an Event of Default, and following such physical inventory shall, promptly upon Agent's request, supply Agent with a report in the form and with such specificity as may be satisfactory to Agent concerning such physical count; (c) Loan Parties shall not remove any Inventory from the locations set forth or permitted herein, without the prior written consent of Agent, except: (i) for sales of Inventory in the ordinary course of its business, (ii) to move Inventory directly from one location set forth or permitted herein (including any new location opened pursuant to Section 9.2 hereof) to another such location, (iii) Inventory shipped from the manufacturer or distributor thereof to such Loan Party which is in transit to the locations set forth or permitted herein (including any new locations opened pursuant to Section 9.2 hereof), and (iv) Inventory (other than Inventory consisting of fuel located at leased terminals) having a value not greater than $500,000 in the aggregate any time; (d) upon Agent's request, Borrowers shall, at their expense, no more than one (1) time in any twelve (12) month period, but at any time or times as Agent may request at the expense of Agent or at the expense of Borrowers upon the occurrence and during the continuance of an Event of Default, deliver or cause to be delivered to Agent written appraisals as to the Inventory in form, scope and methodology reasonably acceptable to Agent and by an appraiser reasonably acceptable to Agent, addressed to Agent and Lenders and upon which Agent and Lenders are expressly permitted to rely; provided, that, if a Cash Dominion Period exists, upon Agent's request, Borrowers shall, at their expense, deliver or cause to be delivered to Agent an additional written inventory appraisal during any twelve (12) month period which shall be in form, scope and methodology reasonably acceptable to Agent, addressed to Agent and Lenders and upon which Agent and Lenders are expressly permitted to rely; (e) Loan Parties shall produce, use, store and maintain the Inventory with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws (including the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all rules, regulations and orders related thereto); (f) none of the Inventory or other Collateral constitutes farm products or the proceeds thereof; (g) as between Loan Parties, on the one hand, and Agent and Lenders, on the other hand, each Loan Party assumes all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory, (h) Loan Parties shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate any Loan Party to repurchase such Inventory, except for the right of return given to customers of such Loan Party in the ordinary course of the business of such Loan Party in accordance with the then current return policy of such Loan Party; (i) Loan Parties shall keep all Eligible Inventory in good and marketable condition for so long as it constitutes Eligible Inventory; and (j) Loan Parties shall not, without prior written notice to Agent or the specific identification of such Inventory in a report with respect thereto provided by Administrative Borrower to Agent pursuant to Section 7.1(a) hereof, acquire or accept any Inventory on consignment or approval.

7.4 Equipment and Real Property Covenants. With respect to the Equipment and Real Property: (a) Loan Parties shall keep the Equipment material to their business in good order and repair (ordinary wear and tear excepted); (b) Loan Parties shall use the Equipment and Real Property with commercially reasonable care and caution and in all material respects in accordance with applicable standards of any insurance and in conformity with all applicable laws; (c) the Equipment is and shall be used in the business of Loan Parties and not for personal, family, household or farming use; and (d) as between Loan Parties, on the one hand, and Agent and Lenders, on the other hand, each Loan Party assumes all responsibility and liability arising from the use of the Equipment and Real Property.

7.5 Power of Attorney. Each Loan Party hereby irrevocably designates and appoints Agent (and all persons designated by Agent) as such Loan Party's true and lawful attorney-in-fact, and authorizes Agent, in such Loan Party's or Agent's name, to: (a) at any time an Event of Default has occurred and is continuing (i) demand payment on Receivables or other Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of such Loan Party's rights and remedies to collect any Receivable or other Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at such time or times as the Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Receivable, (vii) prepare, file and sign such Loan Party's name on any proof of claim in bankruptcy or other similar document against an account debtor or other obligor in respect of any Receivables or other Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral to an address designated by Agent, and open and dispose of all mail addressed to such Loan Party and handle and store all mail relating to the Collateral, (ix) endorse such Loan Party's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, and (x) do all acts and things which are necessary, in Agent's determination, to fulfill such Loan Party's obligations under this Agreement and the other Financing Agreements, and (b) at any time to (i) take control in any manner of any item of payment in respect of Receivables or constituting Collateral if a Cash Dominion Period exists or any items or payment constituting Collateral is otherwise received in or for deposit in the Blocked Accounts or otherwise received by Agent or any Lender, (ii) if a Cash Dominion Period exists, have access to any lockbox or postal box into which remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral are sent or received, (iii) if a Cash Dominion Period exists, endorse such Loan Party's name upon any items of payment in respect of Receivables or constituting Collateral or otherwise received by Agent and any Lender (other than, so long as the Intercreditor Agreement is in effect, proceeds constituting Term Loan Priority Collateral or Specified Term Loan Collateral applied to the Term Loans) and deposit the same in Agent's account for application to the Obligations, (iv) clear Inventory the purchase of which was financed with Letters of Credit through U.S. Customs or foreign export control authorities in such Loan Party's name, Agent's name or the name of Agent's designee, and to sign and deliver to customs officials powers of attorney in such Loan Party's name for such purpose, and to complete in such Loan Party's or Agent's name, any order, sale or transaction, obtain the necessary documents in connection therewith and collect the proceeds thereof, and (v) sign such Loan Party's name on any verification of Receivables and notices thereof to account debtors or any secondary obligors or other obligors in respect thereof. Each Loan Party hereby releases Agent and Lenders and their respective officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of Agent's or any Lender's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

7.6 Right to Cure. Agent may, at its option, upon not less than ten (10) days prior notice to Administrative Borrower (except that no such prior notice shall be required in the case of exigent circumstances as determined by Agent in its Permitted Discretion), (a) cure any material default by any Loan Party under any material agreement with a third party that affects the Collateral, its value or the ability of Agent to collect, sell or otherwise dispose of the Collateral or the rights and remedies of Agent or any Lender therein or the ability of any Loan Party to perform its obligations hereunder or under any of the other Financing Agreements, (b) pay or bond on appeal any material judgment entered against any Loan Party, (c) discharge taxes, liens, security interests or other encumbrances (other than liens, security interests and encumbrances permitted under Section 9.8 hereof) at any time levied on or existing with respect to the Collateral and pay any amount, incur any expense or perform any act which, in Agent's good faith judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Agent and Lenders with respect thereto. Agent may add any amounts so expended to the Obligations and charge any Borrower's account therefor, such amounts to be repayable by Borrowers on demand. Agent and Lenders shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of any Loan Party. Any payment made or other action taken by Agent or any Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

7.7 Access to Premises. From time to time as requested by Agent, at the cost and expense of Borrowers, (a) Agent or its designee shall have complete access to all of each Loan Party's premises during normal business hours and after notice to Parent, or at any time and without notice to Administrative Borrower if an Event of Default has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of each Loan Party's books and records, including the Records, provided, that, (i) unless a Cash Dominion Period exists, Agent shall not conduct such an inspection, verification or audit more than one (1) time during any calendar year and (ii) unless an Event of Default has occurred and is continuing or the expense of such inspection, verification or audit is borne by Agent, Agent shall not conduct such an inspection, verification or audit more than two (2) times during any calendar year, and (b) each Loan Party shall promptly furnish to Agent such copies of such books and records or extracts therefrom as Agent may request, and Agent or any Lender or Agent's designee may use during normal business hours such of any Loan Party's equipment, supplies and premises and may have discussions with any Loan Party's personnel as may be reasonably necessary for the foregoing and if an Event of Default has occurred and is continuing for the collection of Receivables and realization of other Collateral.

SECTION 8. REPRESENTATIONS AND WARRANTIES Each Loan Party hereby represents and warrants to Agent and Lenders the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the making of Loans and providing Letters of Credit to Borrowers:

8.1 Existence, Power and Authority. Each Loan Party is a corporation, limited liability company or other entity duly organized and in good standing under the laws of its state of incorporation or formation and is duly qualified as a foreign corporation or limited liability company and in good standing in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a material adverse effect on such Loan Party's financial condition, results of operation or business or the rights of Agent in or to any of the Collateral. The execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereunder and thereunder (a) are all within each Loan Party's corporate, limited liability company or other organizational powers, (b) have been duly authorized, (c) are not in contravention of the terms of any Loan Party's certificate of incorporation or formation, by-laws, operating agreement or other organizational documentation, (d) are not in contravention in any material respect of any law or any indenture or other material agreement or undertaking to which any Loan Party is a party or by which any Loan Party or its property are bound and (e) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any lien, security interest, charge or other encumbrance upon any property of any Loan Party, except for the creation of a lien in favor of Agent. This Agreement and the other Financing Agreements to which any Loan Party is a party constitute legal, valid and binding obligations of such Loan Party enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar law limiting creditors' rights generally and by general equitable principles.

8.2 Name; State of Organization; Chief Executive Office; Collateral Locations.

(a) As of the Amendment No. 3 Effective Date, the exact legal name of each Loan Party is as set forth in the Information Certificate. No Loan Party has, during the five years prior to the Amendment No. 3 Effective Date had any other corporate name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets out of the ordinary course of business, except as set forth in the Information Certificate. As of the Amendment No. 3 Effective Date, each Loan Party is an organization of the type and organized in the jurisdiction set forth in the Information Certificate. The Information Certificate accurately sets forth the organizational identification number of each Loan Party as of the Amendment No. 3 Effective Date or accurately states that such Loan Party has none as of the Amendment No. 3 Effective Date and accurately sets forth the federal employer identification number of each Loan Party as of the Amendment No. 3 Effective Date.

(b) The chief executive office and mailing address of each Loan Party and each Loan Party's material Records concerning Accounts as of the Amendment No. 3 Effective Date are located only at the address identified as such in Schedule 8.2 to the Information Certificate and its only other places of business and the only other locations of Collateral, if any, as of the Amendment No. 3 Effective Date are the addresses set forth in Schedule 8.2 to the Information Certificate, subject to the rights of any Loan Party to establish new locations in accordance with Section 9.2 below. The Information Certificate correctly identifies as of the Amendment No. 3 Effective Date any of such locations which are not owned by a Loan Party and sets forth the owners and/or operators thereof as of the Amendment No. 3 Effective Date.

8.3 Financial Statements; No Material Adverse Change. All financial statements relating to any Loan Party which have been or may hereafter be delivered by any Loan Party to Agent and Lenders have been prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include complete footnotes) and fairly present in all material respects the financial condition and the results of operation of such Loan Party as of the dates and for the periods set forth therein. Except as disclosed in any interim financial statements furnished by Loan Parties to Agent prior to the Amendment No. 3 Effective Date, there has been no act, condition or event which has had or is reasonably likely to have a Material Adverse Effect since December 31, 2018.

8.4 Priority of Liens; Title to Properties. Subject to the limitations and exceptions expressly set forth herein or in the other Financing Agreements, the security interests and liens granted to Agent under this Agreement and the other Financing Agreements constitute valid and perfected first priority liens and security interests in and upon the Collateral (or, for so long as the Intercreditor Agreement is in effect, valid and perfected junior priority liens and security interests in and upon the Term Loan Priority Collateral), in each case subject only to the Liens permitted under Section 9.8 hereof. Each Loan Party has good and marketable fee simple title to or valid leasehold interests in all of its Real Property and good, valid and merchantable title to all of its other properties and assets material to its business subject to no liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except those granted to Agent and such others as are permitted under Section 9.8 hereof.

8.5 Tax Returns. Each Loan Party has filed, or caused to be filed, in a timely manner all federal income tax returns and other material tax returns, reports and declarations which are required to be filed by it. All information in such tax returns, reports and declarations is complete and accurate in all material respects. Each Loan Party has paid or caused to be paid all material taxes due and payable or claimed due and payable in any assessment received by it, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Loan Party and with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all accrued and unpaid Federal, State, county, local, foreign and other taxes whether or not yet due and payable and whether or not disputed.

8.6 Litigation. Except as set forth on Schedule 8.6 hereto, (a) there is no investigation by any Governmental Authority pending, or to the best of any Loan Party's knowledge threatened, against or affecting any Loan Party, its or their assets or business, in each case, which has had or could reasonably be expected to have a Material Adverse Effect, and (b) there is no action, suit, proceeding or claim by any Person pending, or to the best of any Loan Party's knowledge threatened, against any Loan Party or its or their assets or goodwill, or against or affecting any transactions contemplated by this Agreement, in each case, which has had or could reasonably be expected to have a Material Adverse Effect.

8.7 Compliance with Other Agreements and Applicable Laws.

(a) Loan Parties are not in default in any respect under, or in violation in any respect of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound, except for such defaults or violations which could not be reasonably expected to have a Material Adverse Effect. Loan Parties are in compliance with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority relating to their respective businesses, including, without limitation, those set forth in or promulgated pursuant to the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, ERISA, the Code, as amended, and the rules and regulations thereunder, Environmental Laws, all Federal, State and local statutes, regulations, rules and orders relating to consumer credit (including, without limitation, as each has been amended, the Truth-in-Lending Act, the Fair Credit Billing Act, the Equal Credit Opportunity Act and the Fair Credit Reporting Act, and regulations, rules and orders promulgated thereunder), and all Federal, State and local statutes, regulations, rules and orders pertaining to sales of consumer goods (including, without limitation, the Consumer Products Safety Act of 1972, as amended, and the Federal Trade Commission Act of 1914, as amended, and all regulations, rules and orders promulgated thereunder), except in any case for such non-compliance which could not be reasonably expected to have a Material Adverse Effect.

(b) Loan Parties have obtained all permits, licenses, approvals, consents, certificates, orders or authorizations of any Governmental Authority required for the lawful conduct of its business (the "Permits"), except where the failure to so obtain could not reasonably be expected to have a Material Adverse Effect. All of the Permits are valid and subsisting and in full force and effect, except where the failure to be valid, subsisting or in full force and effect could not reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect, there are no actions, claims or proceedings pending or to the best of any Loan Party's knowledge, threatened that seek the revocation, cancellation, suspension or modification of any of the Permits.

8.8 Environmental Compliance.

(a) Loan Parties and any Subsidiary of any Loan Party have not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which at any time violates any applicable Environmental Law or Permit, except for such violations which could not be reasonably expected to have a Material Adverse Effect, and the operations of Loan Parties and any Subsidiary of any Loan Party comply with all Environmental Laws and all Permits, except for such non-compliance which could not be reasonably expected to have a Material Adverse Effect.

(b) There has been no investigation by any Governmental Authority or any proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person nor is any pending or to the best of any Loan Party's knowledge threatened, with respect to any non-compliance with or violation of the requirements of any Environmental Law by any Loan Party and any Subsidiary of any Loan Party or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which in any case could be reasonably expected to have a Material Adverse Effect.

(c) Loan Parties and their Subsidiaries have no liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials, which in any case could be reasonably expected to have a Material Adverse Effect.

(d) Loan Parties and their Subsidiaries have all Permits required to be obtained or filed in connection with the operations of Loan Parties under any Environmental Law and all of such licenses, certificates, approvals or similar authorizations and other Permits are valid and in full force and effect, except (in any case) where such failure to obtain or file (or be valid in full force and effect) could not reasonably be expected to have a Material Adverse Effect.

8.9 Employee Benefits.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or State law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and to the best of any Loan Party's knowledge, nothing has occurred which would cause the loss of such qualification. Each Borrower and its ERISA Affiliates have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending, or to the best of any Loan Party's knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(c) No ERISA Event has occurred or is reasonably expected to occur; (i) the current value of the assets of each Plan, subject to Section 412 of the Code (determined in accordance with the assumptions used for funding such Plan pursuant to Section 412 of the Code) are not less than such Plan's liabilities under Section 4001(a)(16) of ERISA; (ii) each Loan Party, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iii) each Loan Party, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (iv) each Loan Party, and their ERISA Affiliates, have not engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA.

8.10 Bank Accounts. As of the Amendment No. 3 Effective Date, all of the deposit accounts, investment accounts or other accounts in the name of or used by any Loan Party maintained at any bank or other financial institution are set forth on Schedule 8.10 to the Information Certificate, subject to the right of each Loan Party to establish new accounts in accordance with Section 5.2 hereof.

8.11 Intellectual Property. Each Loan Party owns or licenses or otherwise has the right to use all Intellectual Property necessary for the operation of its business as presently conducted or proposed to be conducted. As of the Amendment No. 3 Effective Date, Loan Parties do not have any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Schedule 8.11 to the Information Certificate and has not granted any licenses with respect thereto other than licenses entered into in the ordinary course of business, and other than as permitted hereunder. No event has occurred which permits or would permit after notice or passage of time or both, the revocation, suspension or termination of such rights, except any such revocation, suspension or termination which could not reasonably be expected to have a Material Adverse Effect. No slogan or other advertising device, product, process, method, substance or other Intellectual Property or goods bearing or using any Intellectual Property presently contemplated to be sold by or employed by any Loan Party infringes any patent, trademark, service mark, trade name, copyright, license or other Intellectual Property owned by any other Person presently and no claim or litigation is pending or threatened against or affecting any Loan Party contesting its right to sell or use any such Intellectual Property, which could reasonably be expected to have a Material Adverse Effect. Schedule 8.11 to the Information Certificate sets forth all of the written agreements of each Loan Party pursuant to which such Loan Party has a material license or other similar right to use any trademarks, logos, designs, representations or other Intellectual Property (other than shrinkwrap software or other commercially available off the shelf software) owned by another person as in effect on the Amendment No. 3 Effective Date (collectively, together with such agreements or other arrangements as may be entered into by any Loan Party after the date hereof, collectively, the "License Agreements" and individually, a "License Agreement").

8.12 Subsidiaries; Affiliates; Capitalization; Solvency.

(a) As of the Amendment No. 3 Effective Date, each Loan Party does not have any direct or indirect Subsidiaries and is not engaged in any joint venture or partnership, in each case except as set forth in Schedule 8.12 to the Information Certificate.

(b) As of the Amendment No. 3 Effective Date, each Loan Party is the record and beneficial owner of all of the issued and outstanding shares of Capital Stock of each of the Subsidiaries listed on Schedule 8.12 to the Information Certificate as being owned by such Loan Party and there are no proxies, irrevocable or otherwise, with respect to such shares and no equity securities of any of the Subsidiaries are or may become required to be issued by reason of any options, warrants, rights to subscribe to, calls or commitments of any kind or nature and there are no contracts, commitments, understandings or arrangements by which any Subsidiary is or may become bound to issue additional shares of its Capital Stock or securities convertible into or exchangeable for such shares.

(c) As of the Amendment No. 3 Effective Date, the issued and outstanding shares of Capital Stock of each Loan Party (other than Parent) are directly and beneficially owned and held by the persons indicated in the Information Certificate, and in each case all of such shares have been duly authorized and are fully paid and non-assessable, free and clear of all claims, liens, pledges and encumbrances of any kind, except for those granted to Agent and such others as disclosed in writing to Agent prior to the date hereof.

(d) Each Loan Party is Solvent and will continue to be Solvent after the creation of the Obligations, the security interests of Agent and the other transaction contemplated hereunder.

8.13 Labor Disputes.

(a) Set forth on Schedule 8.13 hereto is a list (including dates of termination) of all collective bargaining or similar agreements between or applicable to each Loan Party and any union, labor organization or other bargaining agent in respect of the employees of any Loan Party on the date hereof.

(b) Except as could not reasonably be expected to have a Material Adverse Effect there is (i) no unfair labor practice complaint pending against any Loan Party or, to the best of any Loan Party's knowledge, threatened against it, before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement is pending against any Loan Party or, to best of any Loan Party's knowledge, threatened against it, and (ii) no strike, labor dispute, slowdown or stoppage is pending against any Loan Party or, to the best of any Loan Party's knowledge, threatened against any Loan Party.

8.14 Restrictions on Subsidiaries. Except for restrictions contained in this Agreement or any other agreement with respect to Indebtedness of any Loan Party permitted hereunder as in effect on the Amendment No. 3 Effective Date, and except as otherwise permitted under Section 9.16 hereof, there are no contractual or consensual restrictions on any Loan Party which prohibit or otherwise restrict (a) the transfer of cash or other assets between any Loan Party or (b) the ability of any Loan Party to incur Indebtedness or grant security interests to Agent or any Lender in the Collateral.

8.15 Material Contracts. Schedule 8.15 hereto sets forth all Material Contracts to which any Loan Party is a party or is bound as of the date hereof. Loan Parties have delivered true, correct and complete copies of such Material Contracts to Agent on or before the date hereof. Loan Parties are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract which breach, default or termination could be reasonably expected to have a Material Adverse Effect.

8.16 Credit Card Agreements. Set forth in Schedule 8.16 hereto is a correct and complete list of all of the material Credit Card Agreements and all other material agreements existing as of the date hereof between or among any Loan Party (on the one hand) and any Credit Card Issuer or Credit Card Processor (on the other hand). The Credit Card Agreements constitute all of such agreements necessary for each Borrower to operate its business as presently conducted with respect to credit cards and debit cards and no Receivables of any Borrower arise from purchases by customers of Inventory with credit cards or debit cards, other than those which are issued by Credit Card Issuers with whom such Borrower has entered into one of the Credit Card Agreements set forth on Schedule 8.16 hereto or with whom Borrower has entered into a Credit Card Agreement in accordance with Section 9.18 hereof. Each of the Credit Card Agreements constitutes the legal, valid and binding obligations of the Borrower that is party thereto and to the best of each Loan Party's knowledge, the other parties thereto, enforceable in accordance with their respective terms and is in full force and effect, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar law limiting creditors' rights generally and by general equitable principles. No material default or material event of default, or act, condition or event which after notice or passage of time or both, would constitute a material default or a material event of default under any of the Credit Card Agreements exists or has occurred that would entitle the other party thereto to suspend, withhold or reduce material amounts that would otherwise be payable to a Borrower. Each Borrower and the other parties thereto have complied in all material respects with all of the terms and conditions of the Credit Card Agreements to the extent necessary for such Borrower to be entitled to receive all payments thereunder. Borrowers have delivered, or caused to be delivered to Agent, true, correct and complete copies of all of the Credit Card Agreements.

8.17 Interrelated Businesses. Loan Parties make up a related organization of various entities constituting a single economic and business enterprise so that Loan Parties share an identity of interests such that any benefit received by any one of them benefits the others. Certain Loan Parties render services to or for the benefit of the other Loan Parties, as the case may be, purchase or sell and supply goods to or from or for the benefit of certain others, make loans, advances and provide other financial accommodations to or for the benefit of certain other Loan Parties (including inter alia, the payment by certain Loan Parties of creditors of certain other Loan Parties and guarantees by certain Loan Parties of indebtedness of certain other Loan Parties and provide administrative, marketing, payroll and management services to or for the benefit of certain other Loan Parties). Certain Loan Parties have centralized accounting and legal services, certain common officers and directors and generally do not provide consolidating financial statements to creditors and certain Loan Parties have the same chief executive office.

8.18 Payable Practices. Except as disclosed to Agent in writing prior to the Amendment No. 3 Effective Date, no Loan Party has made any material change in the historical accounts payable practices from those in effect immediately prior to the Amendment No. 3 Effective Date.

8.19 [Reserved].

8.20 Propco. Each Propco does not own, and will not own or acquire, any material assets other than Real Property and Equipment.

8.21 Patriot Act. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the Loans will be used by any Borrower or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

8.22 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 designed to ensure compliance with all 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 with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letters of Credit 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, Bank Product Provider, or other individual or entity participating in any transaction).

8.23 Accuracy and Completeness of Information. All information furnished by or on behalf of any Loan Party in writing to Agent or any Lender in connection with this Agreement or any of the other Financing Agreements or any transaction contemplated hereby or thereby (including all information on the Information Certificate and on the Schedules hereto but excluding any projections, forward looking information and information of a general economic or general industry nature) is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading. As of the Amendment No. 3 Effective Date, no event or circumstance has occurred which has had or could reasonably be expected to have a Material Adverse Effect, which has not been fully and accurately disclosed to Agent in writing (including through the public filings of Parent which have been made with the Securities and Exchange Commission) prior to the Amendment No. 3 Effective Date. The information included in the Beneficial Ownership Certification most recently provided to Agent is true and correct in all respects.

8.24 Survival of Warranties; Cumulative. All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to Agent and Lenders on the date of each additional borrowing or other credit accommodation hereunder and shall be conclusively presumed to have been relied on by Agent and Lenders regardless of any investigation made or information possessed by Agent or any Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which any Loan Party shall now or hereafter give, or cause to be given, to Agent or any Lender.

SECTION 9. AFFIRMATIVE AND NEGATIVE COVENANTS

9.1 Maintenance of Existence.

(a) Each Loan Party shall at all times preserve, renew and keep in full force and effect its corporate, limited liability company or other applicable organizational existence and rights and franchises with respect thereto and maintain in full force and effect all licenses, trademarks, trade names, approvals, authorizations, leases, contracts and Permits necessary to carry on the business as presently or proposed to be conducted, except as permitted in Section 9.7 hereof.

(b) No Loan Party shall change its legal name unless each of the following conditions is satisfied: (i) Agent shall have received not less than fifteen (15) days prior written notice (or such lesser period as Agent shall agree) from Administrative Borrower of such proposed change, which notice shall accurately set forth the new legal name of such Loan Party; and (ii) Agent shall have received a copy of the amendment to the certificate of incorporation, certificate of formation or other organizational document of such Loan Party providing for the name change certified by the Secretary of State of the jurisdiction of incorporation or organization of such Loan Party as soon as it is available.

(c) No Loan Party shall change its chief executive office or its mailing address or organizational identification number (or if it does not have one, shall not acquire one) unless Agent shall have received not less than fifteen (15) days' prior written notice (or such lesser period as Agent shall agree) from Administrative Borrower of such proposed change, which notice shall set forth such information with respect thereto as Agent may reasonably require and Agent shall have received such agreements as Agent may reasonably require in connection therewith. No Loan Party shall change its type of organization or jurisdiction of organization, except that any Loan Party may change its type of organization to a corporation or limited liability company and may change its jurisdiction of organization to any state in the United States of America; provided, that, (i) Agent shall have received not less than five (5) Business Days' prior written notice (or such lesser period as to which Agent may agree) of such change, (ii) Agent shall promptly receive true, correct and complete copies of all material agreements, documents and instruments relating to such change, (iii) as of the effective date of such change and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing and (iv) such Loan Party shall execute and deliver such agreements, documents and instruments as Agent may reasonably request in connection therewith.

9.2 New Collateral Locations. Each Loan Party may open any new location, provided, that, such Loan Party provides Agent with written notice thereof within fifteen (15) Business Days following the end of the month in which such location is opened (other than one or more locations having Inventory with an aggregate value of less than $500,000).

9.3 Compliance with Laws, Regulations, OFAC, Etc.

(a) Each Loan Party shall, at all times, comply in all material respects with all laws, rules, regulations, licenses, approvals, orders and other Permits applicable to it and duly observe all requirements of any foreign, Federal, State or local Governmental Authority, except where such non-compliance could not reasonably be expected to have a Material Adverse Effect.

(b) Each Loan Party shall indemnify and hold harmless Agent and Lenders and their respective directors, officers, employees, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, reproduction, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of any Loan Party and the preparation and implementation of any closure, remedial or other required plans, except to the extent such losses, claims, damages, liabilities, costs and expenses are caused by the gross negligence or willful misconduct of Agent or any Lender. The provisions of this Section 9.3(b) shall survive the payment of the Obligations and the termination of this Agreement.

(c) 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 designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties shall and shall cause their respective Subsidiaries to comply with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

9.4 Payment of Taxes and Claims. Each Loan Party shall duly pay and discharge all federal income taxes and other material taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for (a) taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Loan Party, as the case may be, and with respect to which adequate reserves have been set aside on its books, or (b) taxes for which a valid and effective extension to file the applicable tax return has been granted.

9.5 Insurance. Each Loan Party shall at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated (it being understood that the insurers of Loan Parties and the kind and amount of insurance maintained by Loan Parties are acceptable to Agent as of the Amendment No. 3 Effective Date); provided, that, nothing in this Section 9.5 shall require Loan Parties to maintain insurance to insure against liabilities arising from any non-compliance or alleged non-compliance with Environmental Laws. Said policies of insurance shall be reasonably satisfactory to Agent as to form, amount and insurer (it being understood that such policies of insurance are satisfactory to Agent as of the Amendment No. 3 Effective Date). Loan Parties shall furnish certificates, policies or endorsements to Agent as Agent shall reasonably require as proof of such insurance, and, if any Loan Party fails to do so, Agent is authorized, but not required, to obtain such insurance at the expense of Borrowers. Except as Agent may otherwise agree, all policies shall provide for at least thirty (30) days (or, solely in the case of cancellation of coverage for non-payment of insurance premiums, ten (10) days) prior written notice to Agent of any cancellation of coverage. Loan Parties agree that Agent may act as attorney for each Loan Party, at any time an Event of Default has occurred and is continuing, in obtaining adjusting, settling, amending and canceling such insurance. Loan Parties shall cause Agent to be named as a loss payee and an additional insured (but without any liability for any premiums), as applicable, under such insurance policies and Loan Parties shall obtain non-contributory lender's loss payable endorsements to all property insurance policies in form and substance reasonably satisfactory to Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to Agent as its interests may appear and further specify that Agent and Lenders shall be paid regardless of any act or omission by any Loan Party or any of its or their Subsidiaries insured thereunder. Without limiting any other rights of Agent or Lenders, any insurance proceeds received by Agent at any time may be applied to payment of the Obligations, whether or not then due, in any order and in such manner as Agent may determine. Upon application of such proceeds to the Revolving Loans, Revolving Loans may be available subject and pursuant to the terms hereof to be used for the costs of repair or replacement of the Collateral lost or damages resulting in the payment of such insurance proceeds. If an Event of Default has occurred and is continuing or a Compliance Period or Cash Dominion Period exists, Loan Parties shall, promptly upon the request of Agent, maintain (a) a separate property insurance policy covering the assets leased to a Loan Party pursuant to a Lease Agreement and (b) a separate property insurance policy covering all other assets of Loan Parties which comply with the terms of this Section 9.5.

9.6 Financial Statements and Other Information.

(a) Each Loan Party shall keep proper books and records in which true and complete entries shall be made in all material respects of all dealings or transactions of or in relation to the Collateral and the business of such Loan Party and its Subsidiaries in accordance with GAAP. Loan Parties shall promptly furnish to Agent and Lenders all such financial and other information as Agent shall reasonably request relating to the Collateral and the assets, business and operations of Loan Parties. Without limiting the foregoing, Loan Parties shall furnish or cause to be furnished to Agent, the following:

(i) at any time that a Cash Dominion Period exists, then within forty-five (45) days after the end of each fiscal month, monthly unaudited consolidated financial statements (including balance sheets, statements of income and loss, and a cash flow report which sets forth the items necessary to calculate the Fixed Charge Coverage Ratio of Parent and its Subsidiaries), all in reasonable detail fairly presenting in all material respects the financial position and results of operations of Parent and its Subsidiaries as of the end of and through such fiscal month, certified to be correct in all material respects by the chief financial officer of Parent, subject to normal year-end adjustments and no footnotes and accompanied by a compliance certificate substantially in the form of Exhibit C hereto (a "Compliance Certificate"), along with a schedule in a form satisfactory to Agent of the calculations used in determining, as of the end of such month, whether Loan Parties are in compliance with the covenant set forth in Section 9.17 of this Agreement for such month,

(ii) within forty-five (45) days after the end of each fiscal quarter (other than the last fiscal quarter of each fiscal year), quarterly unaudited consolidated financial statements (including in each case balance sheets, statements of income and loss, and statements of cash flow), all in reasonable detail, fairly presenting in all material respects the financial position and the results of operations of Parent and its Subsidiaries as of the end of and through such fiscal quarter, certified to be correct in all material respects by the chief financial officer of Parent, subject to normal year-end adjustments and no footnotes and accompanied by a Compliance Certificate, along with a schedule in a form satisfactory to Agent of the calculations used in determining, as of the end of such quarter, whether Loan Parties are in compliance with the covenant set forth in Section 9.17 of this Agreement for such quarter, and

(iii) within ninety (90) days after the end of each fiscal year, audited consolidated financial statements of Parent and its Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting in all material respects the financial position and the results of operations of Parent and its Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent certified public accountants, which accountants shall be McGladrey LLP, or a "Big Four" accounting firm or another independent accounting firm selected by Borrowers and acceptable to Agent, that such audited financial statements have been prepared in accordance with GAAP, and present fairly in all material respects the results of operations and financial condition of Parent and its Subsidiaries as of the end of and for the fiscal year then ended;

provided, that, any document required to be delivered pursuant to Section 9.6(a)(ii) or (iii) hereof shall be deemed delivered for purposes of this Agreement when such document has been posted to the website of the SEC and to the extent such document is publicly available.

(b) Loan Parties shall promptly notify Agent in writing of the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to Collateral having a value of more than $1,500,000 or which if adversely determined could reasonably be expected to have a Material Adverse Effect, (ii) any Material Contract being terminated or of any Material Contract being amended in any material respect or any new Material Contract entered into (in which event Loan Parties shall provide Agent with a copy of such Material Contract), (iii) any order, judgment or decree in excess of $1,500,000 shall have been entered against any Loan Party or any of its or their properties or assets, (iv) any notification of a material violation of laws or regulations received by any Loan Party, (v) any ERISA Event, and (vi) the occurrence of any Default or Event of Default.

(c) Loan Parties shall promptly after the sending or filing thereof furnish or cause to be furnished to Agent copies of all reports which any Loan Party sends to its stockholders generally and copies of all reports and registration statements which any Loan Party files with the Securities and Exchange Commission, any national securities exchange or the National Association of Securities Dealers, Inc.

(d) Loan Parties shall furnish or cause to be furnished to Agent projections of Parent and its Subsidiaries for each fiscal year, no later than thirty (30) days prior to the start of such fiscal year, and shall furnish or cause to be furnished to Agent such other information respecting the Collateral and the business of Loan Parties, as Agent may, from time to time, reasonably request.

(e) Subject to the terms of Section 13.5 hereof, Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Loan Parties to any court or other Governmental Authority or to any Lender or Participant or prospective Lender or Participant or any Affiliate of any Lender or Participant. Any documents, schedules, invoices or other papers delivered to Agent or any Lender may be destroyed or otherwise disposed of by Agent or such Lender one (1) year after the same are delivered to Agent or such Lender, except as otherwise designated by Administrative Borrower to Agent or such Lender in writing.

9.7 Sale of Assets, Consolidation, Merger, Dissolution, Etc. Each Loan Party shall not:

(a) merge into or with or consolidate with any other Person or permit any other Person to merge into or with or consolidate with it except that (i) any Loan Party may merge with or into or consolidate with any other Loan Party (including any Person which becomes a Loan Party in connection with a Permitted Acquisition subject to the terms of Section 9.21(d) hereof) and (ii) any Loan Party may merge with a newly formed corporation or limited liability company organized in any state in the United States of America which has no assets or liabilities solely for the purpose of either changing the type of organization of such Loan Party to a corporation or limited liability company or changing the jurisdiction of organization of such Loan Party to any state in the United States of America, provided, that, in each case each of the following conditions is satisfied as determined by Agent in good faith: (A) Agent shall receive prompt written notice of any such merger or consolidation, (B) as of the effective date of the merger or consolidation and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (C) in the case of a merger between any Loan Party and such newly formed corporation or limited liability company where such corporation or limited liability company is the surviving corporation or limited liability company, such corporation or limited liability company shall have expressly confirmed, ratified and assumed the Obligations of such Loan Party and the Financing Agreements to which such Loan Party is a party, in form and substance reasonably satisfactory to Agent, and in the case of a merger between any Loan Party and such newly formed corporation or limited liability company, such Loan Party or newly formed corporation or limited liability company shall execute and deliver such other agreements, documents and instruments as Agent may reasonably request in connection therewith, and (D) Agent shall promptly receive true, correct and complete copies of all material agreements, documents and instruments relating to such merger or consolidation;

(b) sell, issue, assign, lease, license, transfer, abandon or otherwise dispose of any Capital Stock to any other Person or any of its assets (including, without limitation, any Delaware LLC Division) (each a "Disposition") to any other Person, except for

(i) sales of Inventory in the ordinary course of business,

(ii) (A) Dispositions in the ordinary course of business of worn-out, damaged or obsolete Equipment or Inventory or Equipment no longer used or useful in the business of any Loan Party, and (B) Dispositions of any other Equipment, any Real Property or the Capital Stock of any Propco; provided, that, (1) as of the date of any such Disposition and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (2) such Disposition shall be on commercially reasonable terms, (3) as of the date of such Disposition and after giving effect thereto, Excess Availability shall not be less than the amount equal to twenty (20%) percent of the Maximum Credit, (4) such Disposition shall not be in connection with any sale-leaseback transaction (it being understood that any such sale-leaseback transaction shall be governed by the terms of Section 9.7(b)(x) hereof), and (5) if a Cash Dominion Period exists, all of the net cash proceeds of such Disposition (other than, so long as the Intercreditor Agreement is in effect, net cash proceeds constituting Term Loan Priority Collateral or Specified Term Loan Collateral applied to the Term Loans) shall promptly be paid to Agent for application to the Obligations in accordance with Section 6.4(a) hereof,

(iii) the issuance and sale by Parent of Capital Stock of Parent (other than Disqualified Capital Stock) after the date hereof; provided, that, if a Cash Dominion Period exists, (A) Agent shall receive prompt written notice of such issuance and sale, and (B) all of the net cash proceeds of the sale and issuance of such Capital Stock shall promptly be paid to Agent for application to the Revolving Loans and all other Obligations then due and payable in accordance with Section 6.4(a) hereof,

(iv) the issuance of Capital Stock of any Loan Party consisting of common stock pursuant to an employee stock option or grant or similar equity plan or 401(k) plans of such Loan Party for the benefit of its employees, directors and consultants, provided, that, in no event shall such Loan Party be required to issue, or shall such Loan Party issue, Capital Stock pursuant to such stock plans or 401(k) plans which would result in a Change of Control or other Event of Default,

(v) Dispositions of assets of any Loan Party to another Loan Party,

(vi) the grant of licenses of Intellectual Property in the ordinary course of business so long as any such license shall not materially interfere with the business of any Loan Party and shall not adversely affect, limit or restrict the rights of Agent to use any Intellectual Property of any Loan Party to sell or otherwise dispose of any Inventory or other Collateral or otherwise adversely limit or interfere in any respect with the use of any such Intellectual Property by Agent in connection with the exercise of its rights or remedies hereunder or under any of the other Financing Agreements,

(vii) leases or subleases of Real Property permitted under Sections 9.8(m) or 9.12 hereof,

(viii) Dispositions of Cash Equivalents for fair market value in the ordinary course of business,

(ix) the issuance and sale by any Borrower (other than Parent) or Guarantor of its Capital Stock (other than Disqualified Capital Stock) to another Loan Party; provided, that, Agent shall have received, in form and substance reasonably satisfactory to Agent (A) evidence that Agent has a valid and perfected first priority security interest in and lien upon all such Capital Stock (or, for so long as the Intercreditor Agreement is in effect, a junior priority security interest) and (B) such other agreements, documents and instruments as Agent may reasonably request to effectuate the purpose and intent of clause (A) above,

(x) the sale of Real ~~Estate~~Property and Equipment in connection with a sale-leaseback transaction permitted under Section 9.7(d) hereof (including the sale of the Capital Stock of any Propco and the leaseback of Real Property and Equipment owned by such Propco),

(xi) the abandonment or lapse of any registrations or applications for registration of any Intellectual Property that is no longer used or useful to Loan Parties in the ordinary course of business,

(xii) Dispositions of Accounts in the ordinary course of business in connection with the settlement or compromise thereof,

(xiii) any other Dispositions of assets of any Loan Party not otherwise permitted under the foregoing provisions of this Section 9.7(b) (other than (x) Dispositions of Accounts of any Loan Party, except as provided in clause (xii) above, or (y) Dispositions of Capital Stock of any Borrower); provided, that, (A) as of the date of such Disposition and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (B) any such Disposition shall be on commercially reasonable terms, (C) as of the date of any such Disposition and after giving effect thereto, the aggregate net book value of all of the assets so sold or disposed of in any fiscal year of Parent shall not exceed $40,000,000 and the aggregate net book value of all assets so sold or disposed of during the term of this Agreement shall not exceed $100,000,000, (D) as of the date of any such Disposition and after giving effect thereto, Excess Availability shall not be less than the amount equal to twenty (20%) percent of the Maximum Credit, (E) any such Disposition shall not be in connection with any sale-leaseback transaction (it being understood that any such sale-leaseback transaction shall be governed by the terms of Section 9.7(b)(x) hereof), and (F) if any of the assets to be sold or disposed of are included in the Borrowing Base or if a Cash Dominion Period exists, all of the net cash proceeds of such Disposition (other than, so long as the Intercreditor Agreement is in effect, net cash proceeds constituting Term Loan Priority Collateral or Specified Term Loan Collateral applied to the Term Loans) shall promptly be paid to Agent for application to the Revolving Loans and all other Obligations then due and payable in accordance with Section 6.4(a) hereof, and

(xiv) the sale of the C-Store Purchased Assets in accordance in all material respects with the terms of the C-Store Purchase Agreement without any amendment or waiver thereto that is materially adverse to the Agent or Lenders in their respective capacities as such; provided, that, (A) as of the date of such sale and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (B) as of the date of such sale and after giving effect thereto, Excess Availability shall not be less than the greater of (1) $40,000,000 or (2) the amount equal to twenty (20%) percent of the Maximum Credit, (C) such sale shall be consummated no later than March 31, 2019, and (D) Agent shall have received a Borrowing Base Certificate, prepared on a pro forma basis as of the date of the Borrowing Base Certificate most recently delivered to the Agent to reflect that no C-Stores Purchased Assets are included in the Borrowing Base as of such date of delivery,

(c) wind up, liquidate or dissolve except that any Guarantor may wind up, liquidate and dissolve, provided, that, each of the following conditions is satisfied, (i) effective upon such winding up, liquidation or dissolution, all of the assets and properties of such Guarantor shall be duly and validly transferred and assigned to a Borrower or another Guarantor or otherwise transferred, assigned or disposed of as permitted hereunder, (ii) Agent shall have received all documents and agreements that any Loan Party has filed with any Governmental Authority or as are otherwise required to effectuate such winding up, liquidation or dissolution, (iii) no Loan Party shall assume any Indebtedness as a result of such winding up, liquidation or dissolution, unless such Indebtedness is otherwise expressly permitted hereunder, (iv) Agent shall receive prompt written notice of any such winding up, liquidation or dissolution, and (v) as of the date of such winding up, liquidation or dissolution and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing; or

(d) enter into any sale-leaseback transaction, except for the sale-leaseback of Real Property and Equipment (including the sale of the Capital Stock of any Propco and the leaseback of Real Property and Equipment owned by such Propco); provided, that, each of the following conditions is satisfied: (i) Agent shall receive prompt written notice of any such sale-leaseback, (ii) promptly upon Agent's request, Agent shall have received true, correct and complete copies of all material agreements, documents and instruments related to such sale-leaseback, (iii) as of the date of the consummation of such sale-leaseback and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (iv) if a Cash Dominion Period exists, all of the net cash proceeds of such sale-leaseback Disposition (other than, so long as the Intercreditor Agreement is in effect, net cash proceeds constituting Term Loan Priority Collateral or Specified Term Loan Collateral applied to the Term Loans) shall promptly be paid to Agent for application to the Revolving Loans and all other Obligations then due and payable in accordance with Section 6.4(a) hereof, (v) such sale-leaseback transaction shall be on commercially reasonable terms, and (vi) as of the date of such sale-leaseback transaction and after giving effect thereto, Excess Availability shall not be less than the amount equal to twenty (20%) percent of the Maximum Credit.

9.8 Encumbrances. Each Loan Party shall not create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever (each, a "Lien") on any of its assets or properties, including without limitation any of the Collateral, except:

(a) the security interests and Liens of Agent for itself and the benefit of Secured Parties;

(b) Liens securing the payment of taxes, assessments or other governmental charges or levies either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to such Loan Party, as the case may be and with respect to which adequate reserves have been set aside on its books;

(c) non-consensual statutory Liens (other than Liens securing the payment of taxes) arising in the ordinary course of such Loan Party's business to the extent: (i) such Liens secure obligations which are not overdue or (ii) such Liens secure obligations relating to claims or liabilities which are being contested in good faith by appropriate proceedings diligently pursued and available to such Loan Party, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of Real Property which do not interfere in any material respect with the ordinary conduct of the business of Loan Parties as presently conducted thereon;

(e) purchase money Liens or the interests of lessors under Capital Leases, in each case, in Equipment and Real Property (and the proceeds, products and accessions thereof and thereto) to secure the Indebtedness permitted under Section 9.9(b) hereof;

(f) pledges and deposits of cash or Cash Equivalents by any Loan Party in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits;

(g) pledges and deposits of cash or Cash Equivalents by any Loan Party to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of Indebtedness), trade lines with vendors, statutory obligations and other similar obligations, in each case in the ordinary course of business and not in connection with the borrowing of money;

(h) Liens arising from (i) any Lease Agreement (or sublease with respect thereto) or any true operating lease entered into in the ordinary course of business and the precautionary UCC financing statement filings in respect thereof, and (ii) equipment or other materials which are not owned by any Loan Party located on the premises of such Loan Party (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of such Loan Party and the precautionary UCC financing statement filings in respect thereof;

(i) judgments and other similar Liens arising as a result of the existence of judgments, orders or awards that do not constitute an Event of Default, provided, that, (i) adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefor, (ii) such judgment or Lien shall be effectively stayed or bonded within thirty (30) days after the date such judgment or Lien first arose and (iii) Agent may establish a Reserve with respect thereto;

(j) Liens or rights of setoff against credit balances of Loan Parties with Credit Card Issuers or Credit Card Processors or amounts owing by such Credit Card Issuers or Credit Card Processors to Loan Parties in the ordinary course of business, but not Liens on or rights of setoff against any other property or assets of Loan Parties, pursuant to the Credit Card Agreements to secure the obligations of Loan Parties to the Credit Card Issuers or Credit Card Processors as a result of fees and chargebacks;

(k) any Lien existing on any assets or properties other than Accounts or Inventory (and the proceeds thereof) of a Person existing at the time such Person becomes a Subsidiary of a Loan Party after the date hereof (and the replacement, extension or renewal of such Lien on the same assets); provided, that (i) such Lien is not created in contemplation of or in connection with a Permitted Acquisition or such Person becoming a Subsidiary, as the case may be, and (ii) such Lien shall secure only the Indebtedness permitted under Section 9.9(n) hereof~~.~~;

(l) Liens ~~on Equipment and Real Property of Loan Parties or the Capital Stock of any Propco~~ to secure Indebtedness permitted under Section 9.9(h) hereof; provided, that, such Liens shall be subject to the terms of the Intercreditor Agreement;

(m) leases or subleases of Real Property granted by any Loan Party in the ordinary course of business and consistent with past practice (i) to its franchisees and (ii) to any Person so long as any such leases or subleases pursuant to this clause (ii) do not interfere in any material respect with the use of such Real Property or the ordinary conduct of the business of such Loan Party as presently conducted thereon or materially impair the value of such Real Property;

(n) any interest or title of a lessor, sublessor, licensee, licensor or sublicensor in or to any asset (other than Accounts or Inventory) under any lease, sublease or license entered into by any Loan Party in the ordinary course of business and covering only the assets so leased, subleased or licensed, in each case that do not interfere in any material respect with the business of any Loan Party;

(o) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(p) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the Indebtedness permitted under Section 9.9(j) hereof;

(q) Liens on cash earnest money deposits made in connection with a letter of intent or purchase agreement with respect to a Permitted Acquisition;

(r) other Liens on assets or properties (other than Accounts and Inventory); provided, that (i) the aggregate fair market value of such assets or properties subject to such Liens does not exceed $2,500,000 at the time of attachment of any such Lien, and (ii) such Liens secure liabilities at any time outstanding not in excess of $2,500,000 in the aggregate; ~~and~~

(s) the security interests and Liens set forth on Schedule 9.8 hereto which are not otherwise permitted under this Section 9.8 above;

(t) Liens to secure Indebtedness permitted under Section 9.9(q) hereof; provided, that, such Liens shall be subject to the terms of the Intercreditor Agreement.

9.9 Indebtedness. Each Loan Party shall not incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for, the Indebtedness, performance, obligations or dividends of any other Person, except:

(a) the Obligations;

(b) purchase money Indebtedness and other Capital Leases arising after the date hereof not to exceed $40,000,000 in the aggregate at any time outstanding, so long as (i) the Liens securing such Indebtedness do not apply to any assets or properties of such Loan Party, other than the Equipment or Real ~~Estate~~Property so purchased or acquired (and the proceeds, products and accessions thereof and thereto), and (ii) the Indebtedness secured thereby does not exceed the cost of the Equipment or Real ~~Estate~~Property so purchased or acquired;

(c) (i) guarantees by any Loan Party of any Indebtedness of another Loan Party which is permitted under this Section 9.9 and (ii) guarantees by any Loan Party of any liabilities or other obligations (other than Indebtedness) of another Loan Party so long as such other Loan Party is not prohibited from incurring such liabilities by the terms of this Agreement;

(d) the Indebtedness of any Loan Party to any other Loan Party arising after the date hereof pursuant to loans by any Loan Party permitted under Section 9.10(g) hereof;

(e) unsecured Indebtedness of any Loan Party to any third person (but not to any other Loan Party), provided, that, each of the following conditions is satisfied as determined by Agent: (i) if the principal amount of such Indebtedness to be incurred exceeds $20,000,000, Agent shall have received at least five (5) Business Days (or such lesser period as to which Agent may agree) prior written notice of the incurrence by such Loan Party of such Indebtedness, (ii) upon Agent's request Agent shall have received true, correct and complete copies of all material agreements, documents and instruments evidencing or otherwise related to such Indebtedness, (iii) as of the date of incurring such Indebtedness and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, and (iv) in the case of Indebtedness with an outstanding principal amount in excess of $2,500,000, Loan Parties shall furnish to Agent all demands or material notices in connection with such Indebtedness either received by any Loan Party or on its behalf promptly after the receipt thereof, or sent by any Loan Party or on its behalf concurrently with the sending thereof, as the case may be;

(f) Indebtedness of any Loan Party entered into in the ordinary course of business pursuant to a Hedge Agreement with a Bank Product Provider; provided, that (i) such arrangements are for bona fide hedging purposes, and (ii) such Indebtedness shall be unsecured, except to the extent such Indebtedness constitutes part of the Obligations arising under or pursuant to Hedge Agreements with any Bank Product Provider that are secured as permitted hereby;

(g) unsecured guarantees by a Loan Party of the obligations of a Specified Subsidiary or another Loan Party arising under a Lease Agreement (or a sublease with respect thereto); provided, that, as of the date on which such guarantee is issued and after giving effect thereto, no Event of Default has occurred and is continuing;

(h) Indebtedness of any Loan Party ~~to any third person (but not to any other Loan Party) secured by a security interest in or lien on Real Property or Equipment of any Loan Party or the Capital Stock of any Propco, provided, that, each of the following conditions is satisfied: (i) Agent shall have received not less than five (5) Business Days prior written notice (or such lesser notice period as to which Agent may reasonably agree) of the incurrence by such Loan Party of such Indebtedness, except that, if such Indebtedness is incurred in connection with a Permitted Acquisition where the consideration paid or payable is less than or equal to $25,000,000, Agent shall receive prompt written notice thereof as is reasonably practicable under the circumstances, (ii) promptly upon Agent's request, Agent shall have received true, correct and complete copies of all material agreements, documents and instruments evidencing or otherwise related to such Indebtedness, (iii) as of the date of incurring such Indebtedness (excluding Qualified Assumed Indebtedness), Agent shall have received evidence, in form and substance reasonably satisfactory to it, which demonstrates that Parent and its Tested Subsidiaries (on a consolidated basis) would have had a Debt Incurrence Ratio of not less than 1.10 to 1.00 for the most recently ended period of twelve (12) consecutive months for which Agent has received financial statements of Parent and its Subsidiaries, determined on a pro forma basis as if such Indebtedness (excluding Qualified Assumed Indebtedness incurred on such date) had been incurred on the first day of such period and as if any Permitted Acquisition which is consummated in connection with the incurrence of such Indebtedness (excluding any Qualified Assumed Indebtedness) had been consummated on the first day of such period, it being understood that any pro forma adjustments relating to such Permitted Acquisition shall be directly attributable to such Permitted Acquisition, shall be factually supportable and shall be expected to have a continuing impact, in each case determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act of 1933 as amended and as interpreted by the staff of the Securities and Exchange Commission, which pro forma adjustments shall be certified by the chief financial officer or chief executive officer of Parent and shall be reasonably satisfactory to Agent; (iv) as of the date of incurring such Indebtedness and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, and (v) in the case of Indebtedness with an outstanding principal amount in excess of $2,500,000, Loan Parties shall furnish to Agent all demands or material notices in connection with such Indebtedness either received by any Loan Party or on its behalf promptly after the receipt thereof, or sent by any Loan Party or on behalf concurrently with the sending thereof, as the case may be;~~ under the Term Loan Agreement and Indebtedness that is permitted to be incurred pursuant to Sections 2.23 and 6.01(c) of the Term Loan Agreement (as in effect on the Amendment No. 4 Effective Date), in an aggregate outstanding principal amount for all such Indebtedness not to exceed the Term Loan Cap (as defined in the Intercreditor Agreement), and any Refinancing Indebtedness in respect thereof; provided, that, if any Indebtedness permitted under this Section 9.9(h) is subordinated in right of payment to any other Indebtedness permitted under this Section 9.9(h), such Indebtedness shall be subordinated in right of payment to the Obligations pursuant to an agreement in form and substance reasonably satisfactory to the Agent;

(i) Indebtedness of any Loan Party entered into in the ordinary course of business pursuant to a Hedge Agreement with a bank or other financial institution other than a Bank Product Provider; provided, that, (i) such bank or other financial institution has combined capital and surplus and undivided profits of not less than $1,000,000,000, (ii) such arrangements are for bona fide hedging purposes, and (iii) such Indebtedness shall be unsecured (but such Indebtedness may be supported by a Letter of Credit Accommodation issued in accordance with the terms hereof);

(j) Indebtedness to finance premiums for property, casualty, liability or other insurance for any Loan Party, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance;

(k) Indebtedness representing deferred compensation to employees, officers, directors, managers or consultants incurred in the ordinary course of business;

(l) Indebtedness consisting of guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations;

(m) Indebtedness incurred in respect of letters of credit, bankers' acceptances, bank guarantees, warehouse receipts or similar instruments, including in respect of workers compensation claims, health, disability, unemployment or other employee benefits, pension obligations, other social security obligations, or property, casualty, liability or other insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims, in each case in respect of obligations arising in the ordinary course of business;

(n) Indebtedness of any Person that becomes a Subsidiary of a Loan Party in connection with a Permitted Acquisition (and the replacement, extension or renewal of such Indebtedness); provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary, (ii) immediately before and after such Person becomes a Subsidiary, no Default or Event of Default shall have occurred and be continuing and (iii) the aggregate principal amount of Indebtedness permitted by this clause (n) shall not exceed $10,000,000 at any time outstanding;

(o) other Indebtedness in an aggregate principal amount not to exceed $2,500,000 at any time outstanding; provided that as of the date of incurring such Indebtedness and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing; ~~and~~

(p) the Indebtedness set forth on Schedule 9.9 hereto which is not otherwise permitted by this Section 9.9 above; provided, that, in the case of Indebtedness with an outstanding principal amount in excess of $2,500,000, Loan Parties shall furnish to Agent all demands or material notices in connection with such Indebtedness either received by any Loan Party or on its behalf, promptly after the receipt thereof, or sent by any Loan Party or on its behalf, concurrently with the sending thereof, as the case may be; and

(q) Indebtedness consisting of "Term Loan Bank Product Obligations" (as defined in the Intercreditor Agreement) and "Term Loan Hedge Obligations" (as defined in the Intercreditor Agreement).

9.10 Loans, Investments, Etc. Each Loan Party shall not make any loans or advance money or property to any person, or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the Capital Stock or Indebtedness or all or a substantial part of the assets or property of any other person, or form or acquire any Subsidiaries (each, an "Investment"), or agree to do any of the foregoing, except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business;

(b) Investments in cash or Cash Equivalents, provided, that, (i) if a Cash Dominion Period exists, and any Loans are then outstanding, Loan Parties shall not be permitted to keep cash or Cash Equivalents in any investment account, securities account or commodity account, and (ii) the terms and conditions of Section 5.2 hereof shall have been satisfied with respect to the deposit account, investment account or other account in which such cash or Cash Equivalents are held;

(c) the equity Investments made by each Loan Party prior to the Amendment No. 3 Effective Date in any of its Subsidiaries;

(d) (i) loans and advances by any Loan Party to employees of such Loan Party not to exceed the principal amount of $5,000,000 in the aggregate at any time outstanding for: (A) reasonably and necessary work-related travel or other ordinary business expenses to be incurred by such employee in connection with their work for such Loan Party, and (B) reasonable and necessary relocation expenses of such employees (including home mortgage financing for relocated employees), and (ii) advances of payroll payments to employees in the ordinary course of business;

(e) equity interests or obligations issued to, and any other Investment received by, any Loan Party by any Person (or the representative of such Person) in respect of obligations of such Person owing to such Loan Party in connection with the insolvency, bankruptcy, receivership or reorganization of such Person or a composition or readjustment of the obligations of such Person;

(f) obligations of account debtors to any Loan Party arising from Accounts which are past due evidenced by a promissory note made by such account debtor payable to such Loan Party; provided, that, promptly upon the receipt of the original of any such promissory note with a value in excess of $500,000 individually or $1,000,000 in the aggregate (or, upon the request of Agent, if an Event of Default has occurred and is continuing, then with any value) by such Loan Party, such promissory note shall be endorsed to the order of Agent by such Loan Party and promptly delivered to Agent as so endorsed to the extent required by Section 5.2(b) hereof;

(g) loans or advances by a Loan Party to another Loan Party after the date hereof, provided, that,

(i) as to all of such loans, the Indebtedness arising pursuant to any such loan shall not be evidenced by a promissory note or other instrument, unless the single original of such note or other instrument is promptly delivered to Agent upon its request to hold as part of the Collateral, with such endorsement and/or assignment by the payee of such note or other instrument as Agent may require, and

(ii) as to loans by a Guarantor to a Borrower, (A) the Indebtedness arising pursuant to such loan shall be subject to, and subordinate in right of payment to, the right of Agent and Lenders to receive the prior final payment and satisfaction in full of all of the Obligations on terms and conditions reasonably acceptable to Agent, and (B) promptly upon Agent's request, Agent shall have received a subordination agreement, in form and substance reasonably satisfactory to Agent, providing for the terms of the subordination in right of payment of such Indebtedness of such Borrower to the prior final payment and satisfaction in full of all of the Obligations, duly authorized, executed and delivered by such Guarantor and such Borrower (it being understood that, so long as no Event of Default has occurred and is continuing, such Borrower may pay, and such Guarantor may receive, payments of principal and interest in respect of such Indebtedness);

(h) any Permitted Acquisition; provided, that, in no event shall any assets acquired pursuant to any Permitted Acquisition be deemed to be Eligible Accounts, Eligible Credit Card Receivables or Eligible Inventory unless the following conditions shall be satisfied as determined by Agent in its Permitted Discretion: (1) except as Agent shall otherwise determine, Agent shall have received an appraisal of the Inventory of the Acquired Business and such other assets of the Acquired Business as Agent may specify, in each case in form and containing assumptions and appraisal methods satisfactory to Agent by an appraiser acceptable to Agent, on which Agent and Lenders are expressly permitted to rely, and (2) except as Agent shall otherwise determine, Agent shall have completed a field examination with respect to the business and assets of the Acquired Business in accordance with Agent's customary procedures and practices and as otherwise required by the nature and circumstances of the business of the Acquired Business, the scope and results of which shall be satisfactory to Agent and any accounts, credit card receivables or inventory of the Acquired Business shall only be Eligible Accounts, Eligible Credit Card Receivables or Eligible Inventory (as the case may be) to the extent the criteria for Eligible Accounts, Eligible Credit Card Receivables or Eligible Inventory (as the case may be) set forth herein are satisfied with respect thereto in accordance with this Agreement (or such other or additional criteria as Agent may establish in its Permitted Discretion with respect thereto in accordance with this Agreement and subject to such Reserves as Agent may establish in its Permitted Discretion in connection with the Acquired Business);

(i) Investments by any Loan Party in another Loan Party; provided, that, any loans or advances by any Loan Party to another Loan Party shall be made in accordance with Section 9.10(g) hereof;

(j) loans and other Investments by a Loan Party (other than any loan to or other Investment in an HPT Company); provided, that, (i) as of the date of any such loan or other Investment and after giving effect thereto, Excess Availability shall not be less than the amount equal to seventeen and one-half (17.5%) percent of the Maximum Credit, (ii) such loans and other Investments are not made in connection with a Permitted Acquisition, and (iii) as of the date of any such loan or other Investment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing;

(k) loans and other Investments by a Loan Party to Excluded Subsidiaries; provided, that, (i) as of the date of such loan or other Investment and after giving effect thereto, Excess Availability shall not be less than the amount equal to seventeen and one-half (17.5%) percent of the Maximum Credit, (ii) as of the date of such loan or other Investment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing, (iii) all Indebtedness and other obligations of the Excluded Subsidiaries shall be non-recourse to Loan Parties and their respective assets, and (iv) the aggregate amount of all such loans and other Investments in Excluded Subsidiaries shall not exceed $5,000,000;

(l) the formation of any Subsidiary; provided, that, if any Subsidiary is formed for the purpose of making, or in anticipation of consummating, a Permitted Acquisition, the applicable Loan Parties and such new Subsidiary shall comply with Sections 5.2 and 9.21 hereof with respect to such Subsidiary (subject to the terms of Section 9.21(d) hereof);

(m) extensions of trade credit in the ordinary course of business, Investments received in settlement of amounts due from account debtors in the ordinary course of business or in connection with an insolvency proceeding involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of any Loan Party and other credits to suppliers in the ordinary course of business;

(n) Investments made as a result of the receipt of non-cash consideration from a Disposition of any assets permitted under Section 9.7 hereof;

(o) Investments constituting Indebtedness permitted under Section 9.9 hereof and guarantees of leases (other than Capital Leases) or of other obligations that do not constitute Indebtedness and which are not prohibited by this Agreement, in each case entered into in the ordinary course of business;

(p) Investments held by a Person acquired in connection with a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition;

(q) subject to Section 9.7(b)(iii) hereof, Investments in which the payment made therefor is made solely with equity interests of Parent or any direct or indirect parent company of Parent not resulting in a Change ~~in~~of Control;

(r) the loans and advances existing as of the date hereof which are set forth on Schedule 9.10 hereto which are not otherwise permitted by this Section 9.10 above; provided, that, as to such loans and advances, Loan Parties shall not, directly or indirectly, amend, modify, alter or change the terms of such loans and advances or any agreement, document or instrument related thereto;

(s) other Investments made by a Loan Party after the date hereof which are not otherwise permitted by this Section 9.10; provided, that, (i) the aggregate amount of such Investments shall not exceed $15,000,000 at any time, (ii) as of the date of any such Investment and after giving effect thereto, Excess Availability shall not be less than the amount equal to seventeen and one-half (17.5%) percent of the Maximum Credit, and (iii) as of the date of such loan or other Investment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing; and

(t) other Investments made by a Loan Party after the date hereof which are not otherwise permitted by this Section 9.10; provided, that, (i) the aggregate amount of such Investments shall not exceed $2,500,000 at any time, and (ii) as of the date of such loan or other Investment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing.

9.11 Dividends and Redemptions. Each Loan Party shall not through any manner or means, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Payment except that:

(a) any Loan Party (other than Parent) may make Restricted Payments to any other Loan Party;

(b) Loan Parties may make Restricted Payments to the extent permitted in Section 9.12 below;

(c) Parent may make Restricted Payments in cash, from funds legally available therefor; provided, that, with respect to each such Restricted Payment: (i) Agent shall have received at least five (5) Business Days prior written notice (or such lesser notice period as to which Agent may agree) thereof, (ii) as of the date of any such payment and after giving effect thereto, Excess Availability shall not be less than the amount equal to seventeen and one-half (17.5%) percent of the Maximum Credit, and (iii) as of the date of any such Restricted Payment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing;

(d) Parent may make Restricted Payments in the form (i) of Capital Stock of Parent (other than Disqualified Capital Stock) or (ii) cash in lieu of fractional shares of Capital Stock in connection with any Restricted Payment or Permitted Acquisition, in each case as permitted hereunder; and

(e) Parent may repurchase Capital Stock of Parent deemed to occur upon the cashless exercise of stock options or warrants if such Capital Stock represents a portion of the exercise price of such options or warrants; provided, that, no Loan Party shall pay, or be required to pay, any amounts in respect of any such repurchase other than in the form of Capital Stock of Parent (other than Disqualified Capital Stock).

9.12 Transactions with Affiliates and HPT Companies. Each Loan Party shall not:

(a) purchase, acquire or lease any property from, or sell, transfer or lease any property to, any Affiliate of such Loan Party, except (i) in the ordinary course of and pursuant to the reasonable requirements of such Loan Party's business (as the case may be) and upon fair and reasonable terms which are no less favorable to such Loan Party as would be obtainable by such Loan Party at the time in a comparable arm's-length transaction with a Person other than an Affiliate, and solely in the case of transactions with the HPT Companies, as reasonably determined by the Independent Directors, (ii) transactions among or between any Loan Party and any other Loan Party which are not prohibited by this Agreement or any other Financing Agreement, (iii) Restricted Payments permitted under Section 9.11 hereof, (iv) Investments permitted under Section 9.10 hereof, and (v) Dispositions between or among Loan Parties permitted under Section 9.7(b) hereof;

(b) make any payments (whether by dividend, loan or otherwise) of management, consulting or other fees for management or similar services, or of any Indebtedness owing to any Affiliate of such Loan Party, except (i) reasonable compensation to executive officers or directors for services rendered to such Loan Party in the ordinary course of business, and (ii) regularly scheduled payments of fees or reimbursement of expenses due and payable in accordance with the terms of the Shared Services Agreement as in effect on the Amendment No. 3 Effective Date;

(c) purchase, acquire or lease any property from, or sell, transfer or lease any property to, any HPT Company, except (i) for the lease of real property from an HPT Company in the ordinary course of business or (ii) pursuant to the reasonable requirements of such Loan Party's business and upon fair and reasonable terms as reasonably determined by the Independent Directors;

(d) enter into any lease with any HPT Company after the date hereof unless Agent shall have received an agreement, in form and substance reasonably satisfactory to Agent, duly executed and delivered by such HPT Company (it being agreed that such agreement shall be satisfactory to Agent if it is substantially similar to the Letter Agreement, dated as of November 19, 2007, among HPT Trust, HPT LLC, TA Leasing, Agent and the other parties thereto); or

(e) request or obtain, without the prior written consent of Agent, any services in which a Person (other than a Loan Party) would, directly or indirectly, monitor, invoice or collect any Collateral of a Loan Party, prepare or generate any financial statements of a Loan Party, or administer all or any part of the cash management system of a Loan Party.

9.13 Compliance with ERISA. Each Loan Party shall, and shall cause each of its ERISA Affiliates, to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and State law; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (c) not terminate any of such Plans so as to incur any material liability to the Pension Benefit Guaranty Corporation; (d) not allow or suffer to exist any prohibited transaction involving any of such Plans or any trust created thereunder which would subject such Loan Party or such ERISA Affiliate to a material tax or penalty or other liability on prohibited transactions imposed under Section 4975 of the Code or ERISA; (e) make all required contributions to any Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or the terms of such Plan; (f) not allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such Plan; or (g) allow or suffer to exist any occurrence of a reportable event or any other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation of any such Plan that is a single employer plan, which termination could result in any material liability to the Pension Benefit Guaranty Corporation.

9.14 End of Fiscal Years; Fiscal Quarters. Except as Agent shall otherwise agree, each Loan Party shall, for financial reporting purposes, cause its, and each of its Subsidiaries' (a) fiscal years to end on December 31 of each year and (b) fiscal quarters to end on March 31, June 30, September 30 and December 31 of each year.

9.15 Change in Business. Each Loan Party shall not engage in any business other than the business of such Loan Party on the Amendment No. 3 Effective Date and any business reasonably related, ancillary or complementary to the business in which such Loan Party is engaged on the Amendment No. 3 Effective Date.

9.16 Limitation of Restrictions Affecting Subsidiaries. Each Loan Party shall not create or otherwise cause or suffer to exist any encumbrance or restriction which prohibits or limits the ability of any Loan Party to (a) pay dividends or make other distributions or pay any Indebtedness owed to another Loan Party; (b) make loans or advances to another Loan Party, (c) transfer any of its properties or assets to another Loan Party; or (d) create, incur, assume or suffer to exist any lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than encumbrances and restrictions arising under (i) applicable law, (ii) this Agreement ~~or~~, any other Financing Agreement, the Term Loan Documents and any document governing Incremental Equivalent Debt or Permitted Ratio Debt (each as defined in the Term Loan Agreement), (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of such Loan Party, (iv) customary restrictions on dispositions of real property interests found in reciprocal easement agreements of such Loan Party, (v) any agreement relating to permitted Indebtedness incurred by a Subsidiary of such Loan Party prior to the date on which such Subsidiary was acquired by such Loan Party and outstanding on such acquisition date, (vi) customary provisions in license agreements restricting assignments or transfers of the rights of a licensee under such license agreement, (vii) the Existing HPT Leases (as in effect on the date hereof) and any other Lease Agreement entered into after the date hereof; provided, that, any such encumbrances or restrictions contained in any other Lease Agreement (taken as a whole) are not materially less favorable to Loan Parties, Agent or Lenders than those encumbrances and restrictions under the Existing HPT Leases (as in effect on the date hereof), (viii) customary restrictions contained in leases, subleases, licenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (ix) any agreement relating to Indebtedness permitted hereunder; provided, that, any such encumbrances or restrictions contained therein are no more restrictive (taken as a whole) then the encumbrances and restrictions contained in the Financing Agreements, (x) any agreement relating to the purchase money Indebtedness or Capital Leases permitted under Section 9.9(b) hereof, provided, that, such encumbrances or restrictions relate only to the assets which secure such Indebtedness of Capital Leases~~,~~ and (xi) the foregoing shall not apply to customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder so long as such restrictions relate only to the equity interests issued by such joint venture.

9.17 Minimum Fixed Charge Coverage Ratio. If a Compliance Period exists, the Fixed Charge Coverage Ratio of Parent and its Tested Subsidiaries (on a consolidated basis) for the most recently ended period of twelve (12) consecutive months for which Agent has received financial statements of Parent and its Subsidiaries shall not be less than 1.00 to 1.00.

9.18 Credit Card Agreements. Each Loan Party shall (a) observe and perform in all material respects all material terms, covenants, conditions and provisions of the Credit Card Agreements to be observed and performed by it at the times set forth therein; and (b) at all times maintain in full force and effect the Credit Card Agreements, except, that, any Loan Party may terminate or cancel any of the Credit Card Agreements in the ordinary course of the business of such Loan Party; provided, that, such Loan Party shall give Agent prompt written notice of such termination or cancellation. Upon any Loan Party entering any new Credit Card Agreements with a new Credit Card Issuer or Credit Card Processor, such Loan Party shall furnish to Agent prompt written notice thereof (together with such other information with respect thereto as Agent may reasonably request) and, promptly upon Agent's request, a Credit Card Acknowledgment in favor of Agent, as executed by such new Credit Card Issuer or Credit Card Processor. Promptly upon the request of Agent, Borrowers shall furnish to Agent such information and evidence as Agent may reasonably require from time to time concerning the observance, performance and compliance by Borrowers or the other party or parties thereto with the terms, covenants or provisions of the Credit Card Agreements.

9.19 License Agreements.

(a) Each Loan Party shall (i) promptly and faithfully observe and perform in all material respects all of the terms, covenants, conditions and provisions of the Material License Agreements to be observed and performed by it, at the times set forth therein, if any, (ii) not do, permit, suffer or refrain from doing anything that could reasonably be expected to result in a default under or breach of any of the terms of any Material License Agreement, (iii) not cancel, surrender or release any Material License Agreement, or modify, amend or waive any Material License Agreement in any manner which is (or could reasonably be expected to be) adverse to the interests of any Loan Party in any material respect, or consent to or permit to occur any of the foregoing; except, that, subject to Section 9.19(b) below, such Loan Party may cancel, surrender or release any Material License Agreement; provided, that, such Loan Party (as the case may be) shall give Agent not less than thirty (30) days prior written notice (or such lesser notice period as to which Agent may agree) of its intention to so cancel, surrender and release any such Material License Agreement, (iv) give Agent prompt written notice of any Material License Agreement entered into by such Loan Party after the date hereof, together with a true, correct and complete copy thereof and such other information with respect thereto as Agent may reasonably request, (v) give Agent prompt written notice of any material breach of any obligation, or any default, by any party under any Material License Agreement, and deliver to Agent (promptly upon the receipt thereof by such Loan Party in the case of a notice such Loan Party and concurrently with the sending thereof in the case of a notice to such Loan Party) a copy of each notice of default and every other similar notice or other communication received or delivered by such Loan Party in connection with any Material License Agreement which relates to the right of such Loan Party to continue to use property subject to such License Agreement, and (vi) furnish to Agent, promptly upon the request of Agent, such information and evidence as Agent may reasonably require from time to time concerning the observance, performance and compliance by such Loan Party of the other party or parties thereto with the material terms, covenants or provisions of any material License Agreement.

(b) Each Loan Party will either exercise any option to renew or extend the term of each Material License Agreement to which it is a party in such manner as will cause the term of such Material License Agreement to be effectively renewed or extended for the period provided by such option and give prompt written notice thereof to Agent or give Agent prior written notice that such Loan Party does not intend to renew or extend the term of any such Material License Agreement or that the term thereof shall otherwise be expiring, not less than thirty (30) days prior to the date of any such non-renewal or expiration (or such shorter period as Agent shall agree). In the event of the failure of such Loan Party to extend or renew any Material License Agreement to which it is a party, Agent shall have, and is hereby granted, the irrevocable right and authority, exercisable at its option at any time that an Event of Default shall have occurred and be continuing, to renew or extend the term of such Material License Agreement, whether in its own name and behalf, or in the name and behalf of a designee or nominee of Agent or in the name and behalf of such Loan Party, as Agent shall determine in good faith. If an Event of Default shall have occurred and be continuing, Agent may, but shall not be required to, perform any or all of such obligations of such Loan Party under any of the License Agreements, including, but not limited to, the payment of any or all sums due from such Loan Party thereunder. Any sums so paid by Agent shall constitute part of the Obligations.

9.20 Costs and Expenses. Subject to the limitations contained in Sections 7.3, 7.4 and 7.7 hereof, Loan Parties shall pay to Agent on demand all documented costs, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, syndication, administration, collection, liquidation, enforcement and defense of the Obligations, Agent's rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be contemplated (whether or not executed) or entered into in respect hereof and thereof, including: (a) all reasonable and documented out-of-pocket costs and expenses of filing or recording (including UCC financing statement filing taxes and fees, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable); (b) costs and expenses and fees for insurance premiums, inspections, appraisal fees (subject to the limitations contained in Sections 7.3(d) and 7.4(a) hereof) and search fees, costs and expenses of remitting loan proceeds, collecting checks and other items of payment, and establishing and maintaining the Blocked Accounts, together with Agent's customary charges and fees with respect thereto; (c) charges, fees or expenses charged by any bank or issuer in connection with the Letters of Credit; (d) costs and expenses of preserving and protecting the Collateral; (e) costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against Agent or any Lender arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters); (f) all out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by Agent during the course of periodic field examinations of the Collateral and such Loan Party's operations, plus a per diem charge at Agent's then standard rate for Agent's examiners in the field and office (which rate as of the date hereof is $1,000 per person per day), plus out-of-pocket expenses (including travel, meals, and lodging) for each field examination of any Loan Party or its Subsidiaries performed by or on behalf of Agent; (g) fees, charges or expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to appraise the Collateral, or any portion thereof; and (h) the fees and disbursements of counsel to Agent (limited to one counsel to Agent, one regulatory counsel to Agent, and one local counsel to Agent in each applicable jurisdiction, in each case including legal assistants) in connection with any of the foregoing.

9.21 Further Assurances.

(a) In the case of the formation or acquisition by a Loan Party of any wholly-owned Subsidiary after the date hereof (other than an Excluded Subsidiary but including the formation of any Subsidiary that is a Divided Delaware LLC that is not an Excluded Subsidiary), as to any such Subsidiary, (i) the Loan Party forming such Subsidiary shall cause any such Subsidiary (other than a Subsidiary organized under the laws of a jurisdiction outside the United States) to execute and deliver to Agent, the following (each in form and substance reasonably satisfactory to Agent), (A) an absolute and unconditional guarantee of payment of the Obligations, (B) a security agreement granting to Agent a first priority security interest and lien ~~(~~on the Collateral (or, for so long as the Intercreditor Agreement is in effect, a junior priority security interest and lien on the Term Loan Priority Collateral) (in each case except as otherwise consented to in writing by Agent and subject to the Liens permitted under Section 9.8 hereof) upon the assets of any such Subsidiary of the type or category of the assets of Borrowers subject to the security interests and liens pursuant hereto, and (C) such other agreements, documents and instruments as Agent may reasonably require in connection with the documents referred to above in order to make such Subsidiary a party to this Agreement as a "Borrower" or as a "Guarantor" as Agent may determine (subject to Administrative Borrower's rights under Section 9.21(e) hereof), including, but not limited to, supplements and amendments hereto, authorization to file UCC financing statements, use of commercially reasonable efforts to deliver Collateral Access Agreements and other consents, waivers, acknowledgments and other agreements from third persons which Agent may deem necessary or desirable in order to permit, protect and perfect its security interests in and liens upon the assets purchased, corporate resolutions and other organization and authorizing documents of such Person, and favorable opinions of counsel to such person and (ii) the Loan Party forming such Subsidiary shall (A) execute and deliver to Agent, a pledge and security agreement, in form and substance satisfactory to Agent, granting to Agent a first (or, for so long as the Intercreditor Agreement is in effect, a second) priority pledge of and lien on all of the issued and outstanding shares of Capital Stock of any such Subsidiary or, in the case of a Subsidiary organized under the laws of a jurisdiction outside the United States, sixty-five (65%) percent of the issued and outstanding shares of Capital Stock of such Subsidiary, and (B) deliver the original stock certificates (if any) evidencing such shares of Capital Stock (or such other evidence as may be issued in the case of a limited liability company), together with stock powers with respect thereto duly executed in blank (or the equivalent thereof in the case of a limited liability company in which such interests are certificated, or otherwise take such actions as Agent shall require with respect to Agent's security interests therein).

(b) In the case of an acquisition of assets (other than Capital Stock) by a Loan Party (including indirectly through a Specified Subsidiary) pursuant to a Permitted Acquisition after the date hereof, if Agent shall request, Agent shall have received, in form and substance reasonably satisfactory to Agent, (i) evidence that Agent has valid and perfected security interests in and liens upon all purchased assets of the type or category of assets of Borrowers subject to the security interests and liens pursuant hereto (except for Excluded Assets, such assets encumbered by a lien permitted under Section 9.8(e) or (l) hereof and such assets owned by a Subsidiary organized under the laws of a jurisdiction outside the United States), and (ii) such other agreements, documents and instruments as Agent may require in connection with the documents referred to above, including, but not limited to, supplements and amendments hereto, corporate resolutions and other organization and authorizing documents and favorable opinions of counsel to such person.

(c) At the request of Agent at any time and from time to time, Loan Parties shall, and shall cause each Specified Subsidiary to, at their expense, in each case subject to any limitations and exceptions set forth herein or in any of the other Financing Agreements, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect, maintain and enforce the security interests and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements. Agent may at any time and from time to time request a certificate from an officer of any Loan Party representing that all conditions precedent to the making of Loans and providing Letters of Credit contained herein are satisfied (other than any conditions precedent the satisfaction of which is subject to the discretion of Agent or the Lenders). In the event of such request by Agent, Agent and Lenders may, at Agent's option, cease to make any further Loans or provide any further Letters of Credit until Agent has received such certificate and has determined that such conditions precedent to the making of Loans and providing Letters of Credit are satisfied.

(d) Notwithstanding the requirements set forth in Sections 5.2 and 9.21(a) and (b) above, Agent shall not require compliance with the requirements of those sections contemporaneously upon the formation of a Subsidiary, or the consummation of a Permitted Acquisition; provided, that, Loan Parties and such new Subsidiaries shall comply therewith within forty-five (45) days of the occurrence of the formation of such Subsidiary or the consummation of such Permitted Acquisition (unless Agent extends or waives such compliance either in whole or in part).

(e) If after the date hereof any Guarantor which is organized or incorporated under the laws of a State of the United States of America has any Eligible Accounts, Eligible Cash Collateral, Eligible Credit Card Receivables or Eligible Inventory, then Administrative Borrower may elect for such Guarantor to become a Borrower hereunder and under the other Financing Agreements by executing and delivering to Agent a Guarantor Conversion Notice. Upon Agent's receipt of a Guarantor Conversion Notice, duly executed by Administrative Borrower and properly completed which requests that a Guarantor become a Borrower, Agent shall countersign such Guarantor Conversion Notice within three (3) Business Days, whereupon such Guarantor shall automatically become a Borrower hereunder and shall cease to be a Guarantor hereunder and under the other Financing Agreements.

9.22 Limitation on Voluntary Prepayments and Modifications of Term Loan Documents.

(a) The Loan Parties shall not make any voluntary prepayment in respect of Indebtedness permitted under Section 9.9(h) unless, (i) as of the date of any such voluntary prepayment and after giving effect thereto, (A) Excess Availability shall not be less than an amount equal to seventeen and one-half (17.5%) percent of the Maximum Credit and (B) no Event of Default shall have occurred and be continuing, (ii) any such voluntary prepayment is in connection with the incurrence of, and repaid with the identifiable cash proceeds of, Refinancing Indebtedness in respect of such Indebtedness, (iii) any such voluntary prepayment is funded with the identifiable cash proceeds of the issuance of Capital Stock (other than Disqualified Capital Stock) of Parent, or (iv) any such voluntary prepayment is a conversion or exchange of any such Indebtedness for Capital Stock (other than Disqualified Capital Stock) of Parent.

(b) The Loan Parties shall not amend, supplement or otherwise modify the Term Loan Agreement, the other Term Loan Documents or the documentation governing any other Indebtedness permitted under Section 9.9(h) to the extent prohibited by the Intercreditor Agreement.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES

10.1 Events of Default. The occurrence or existence of any one or more of the following events are referred to herein individually as an "Event of Default", and collectively as "Events of Default":

(a) (i) any Borrower fails to pay any of the Obligations when due or (ii) any Loan Party fails to perform any of the covenants contained in Sections 9.1(b), 9.1(c), 9.3, 9.4, 9.13, 9.14, 9.15, 9.16 and 9.18 of this Agreement or in any of the other Financing Agreements and such failure shall continue for thirty (30) days; provided, that, such thirty (30) day period shall not apply in the case of: (A) any failure to observe any such covenant which is not capable of being cured at all or within such thirty (30) day period or which has been the subject of a prior failure within a three (3) month period or (B) a willful breach by any Borrower or Obligor of any such covenant or (iii) any Borrower or Obligor fails to perform any of the terms, covenants, conditions or provisions contained in this Agreement other than those described in Sections 10.1(a)(i) and 10.1(a)(ii) above;

(b) any representation, warranty or statement of fact made by any Loan Party to Agent in this Agreement, the other Financing Agreements or any other written agreement, schedule, confirmatory assignment or document shall when made or deemed made be false or misleading in any material respect;

(c) any Obligor revokes or terminates or purports to revoke or terminate or fails to perform any of the terms, covenants, conditions or provisions of any guarantee, endorsement or other agreement of such party in favor of Agent or any Lender;

(d) any one or more judgments for the payment of money is or are rendered against any Borrower or Obligor in excess of $2,500,000 in the aggregate (to the extent not covered by insurance where the insurer has assumed responsibility in writing for such judgment) and shall remain undischarged or unvacated for a period in excess of thirty (30) days or execution shall at any time not be effectively stayed, or any one or more judgments (other than for the payment of money), injunctions, attachments, garnishments or executions is or are rendered against any Borrower, any Obligor or any of the Collateral having a value in excess of $2,500,000 in the aggregate which is not effectively stayed, discharged, vacated or bonded;

(e) any Borrower or Obligor, which is a partnership, limited liability company, limited liability partnership or a corporation, dissolves or suspends or discontinues doing business, except as permitted hereunder;

(f) any Borrower or Obligor makes an assignment for the benefit of creditors, makes or sends notice of a bulk transfer or calls a meeting of its creditors or principal creditors in connection with a moratorium or adjustment of the Indebtedness due to them;

(g) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed against any Borrower or Obligor or all or any part of its properties and such petition or application is not dismissed within forty-five (45) days after the date of its filing or any Borrower or Obligor shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(h) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed by any Borrower or Obligor or for all or any part of its property;

(i) (i) any default in respect of any Indebtedness of any Borrower or Obligor (other than Indebtedness owing to Agent and Lenders hereunder), in any case in an amount in excess of $2,500,000~~,~~ (or, in the case of any Indebtedness under the Term Loan Agreement, in any amount) which default continues for more than the applicable cure period, if any, with respect thereto~~.~~; provided, that, notwithstanding anything to the contrary contained in this Section 10.1(i), an "Event of Default" under and as defined in the Term Loan Agreement shall only result in an Event of Default under this Section 10.1(i) if either (A) an "Event of Default" under Section 7.01(b), (c), (h) or (i) of the Term Loan Agreement (or any substantially similar or successor provision) has occurred or (B) an "Event of Default" under the Term Loan Agreement (other than an "Event of Default" described in the immediately preceding clause (A)) has occurred and, solely in the case of this clause (B), (1) such "Event of Default" is continuing for a period of 45 days or (2) any Indebtedness under the Term Loan Agreement has been declared to be due and payable prior to its stated maturity or (3) the Term Loan Agent or Term Loan Lenders have commenced the exercise of any secured creditor remedies; or (ii) any default by any Borrower or Obligor under any Material Contract, which default continues for more than the applicable cure period, if any, with respect thereto and/or is not waived in writing by the other parties thereto, or (iii) any Credit Card Issuer or Credit Card Processor withholds payment of amounts otherwise payable to a Loan Party to fund a reserve account or otherwise hold as collateral, or shall require a Loan Party to pay funds into a reserve account or for such Credit Card Issuer or Credit Card Processor to otherwise hold as collateral, or any Loan Party shall provide a letter of credit, guarantee, indemnity or similar instrument to or in favor of such Credit Card Issuer or Credit Card Processor such that in the aggregate all of such funds in the reserve account, other amounts held as collateral and the amount of such letters of credit, guarantees, indemnities or similar instruments shall exceed $2,500,000 or any such Credit Card Issuer or Credit Card Processor shall debit or deduct any amounts in excess of $2,500,000 in the aggregate in any fiscal year of Loan Parties from any deposit account of any Loan Party;

(j) any material provision hereof or of any of the other Financing Agreements shall for any reason cease to be valid, binding and enforceable with respect to any party hereto or thereto (other than Agent) in accordance with its terms, or any such party shall challenge the enforceability hereof or thereof, or shall assert in writing, or take any action or fail to take any action based on the assertion that any provision hereof or of any of the other Financing Agreements has ceased to be or is otherwise not valid, binding or enforceable in accordance with its terms, or any security interest provided for herein or in any of the other Financing Agreements shall cease to be a valid and perfected first priority security interest in any of the Collateral purported to be subject thereto (except as otherwise permitted herein or therein);

(k) an ERISA Event shall occur which results in or could reasonably be expected to result in liability of any Borrower in an aggregate amount in excess of $2,500,000;

(l) any Change of Control; or

(m) the indictment by any Governmental Authority, or the threatened indictment in writing by any Governmental Authority of any Borrower or Obligor of which any Borrower, Obligor or Agent receives notice, in either case, as to which there is a reasonable probability of an adverse determination under any criminal statute, or commencement of criminal proceedings by any Governmental Authority against such Borrower or Obligor, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of (i) any of the Collateral having a value in excess of $2,500,000 or (ii) any other property of any Loan Party which is necessary or material to the conduct of its business.

10.2 Remedies.

(a) At any time an Event of Default has occurred and is continuing, Agent and Lenders shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by any Borrower or Obligor, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to Agent and Lenders hereunder, under any of the other Financing Agreements, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in Agent's discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by any Borrower or Obligor of this Agreement or any of the other Financing Agreements. Subject to Section 12 hereof, Agent may, and at the direction of the Required Lenders shall, at any time or times, proceed directly against any Borrower or Obligor to collect the Obligations without prior recourse to the Collateral.

(b) Without limiting the generality of the foregoing, at any time an Event of Default has occurred and is continuing, Agent may, at its option and shall upon the direction of the Required Lenders, (i) upon notice to Administrative Borrower, accelerate the payment of all Obligations and demand immediate payment thereof to Agent for itself and the benefit of Lenders (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all Obligations shall automatically become immediately due and payable), (ii) upon notice to Administrative Borrower, direct Borrowers to provide (and Borrowers agree upon receipt of such notice to provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations in respect of drawings that subsequently occur under issued and outstanding Letters of Credit (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), such notice shall be deemed automatically given), and (iii) terminate the Commitments and this Agreement (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), the Commitments and any other obligation of the Agent or a Lender hereunder shall automatically terminate).

(c) Without limiting the foregoing, at any time an Event of Default has occurred and is continuing, Agent may, in its discretion (i) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (ii) require any Borrower or Obligor, at Borrowers' expense, to assemble and make available to Agent any part or all of the Collateral at any place and time designated by Agent, (iii) collect, foreclose, receive, appropriate, setoff and realize upon any and all Collateral, (iv) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (v) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Agent or elsewhere) at such prices or terms as Agent may deem reasonable, for cash, upon credit or for future delivery, with the Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of any Borrower or Obligor, which right or equity of redemption is hereby expressly waived and released by Borrowers and Obligors and/or (vi) terminate this Agreement. If any of the Collateral is sold or leased by Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Agent. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Agent to Administrative Borrower designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrowers and Obligors waive any other notice. In the event Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, each Borrower and Obligor waives the posting of any bond which might otherwise be required. At any time an Event of Default has occurred and is continuing, upon Agent's request, Borrowers will provide Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations in respect of drawings that may subsequently occur under issued and outstanding Letters of Credit.

(d) At any time or times that an Event of Default has occurred and is continuing, Agent may, in its discretion, enforce the rights of any Borrower or Obligor against any account debtor, secondary obligor or other obligor in respect of any of the Accounts or other Receivables. Without limiting the generality of the foregoing, Agent may, in its discretion, at such time or times (i) notify any or all account debtors (including Credit Card Issuers and Credit Card Processors), secondary obligors or other obligors in respect thereof that the Receivables have been assigned to Agent and that Agent has a security interest therein and Agent may direct any or all accounts debtors (including Credit Card and Credit Card Processors), secondary obligors and other obligors to make payment of Receivables directly to Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Receivables or other obligations included in the Collateral and thereby discharge or release the account debtor or any secondary obligors or other obligors in respect thereof without affecting any of the Obligations, (iii) demand, collect or enforce payment of any Receivables or such other obligations, but without any duty to do so, and Agent and Lenders shall not be liable for any failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (iv) take whatever other action Agent may deem necessary or desirable for the protection of its interests and the interests of Lenders. At any time that an Event of Default has occurred and is continuing, at Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other obligations have been assigned to Agent and are payable directly and only to Agent and Borrowers and Obligors shall deliver to Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Agent may require. In the event any account debtor returns Inventory when an Event of Default has occurred and is continuing, Borrowers shall, upon Agent's request, hold the returned Inventory in trust for Agent, segregate all returned Inventory from all of its other property, dispose of the returned Inventory solely according to Agent's instructions, and not issue any credits, discounts or allowances with respect thereto without Agent's prior written consent.

(e) To the extent that applicable law imposes duties on Agent or any Lender to exercise remedies in a commercially reasonable manner (which duties cannot be waived under such law), each Loan Party acknowledges and agrees that it is not commercially unreasonable for Agent or any Lender (i) to fail to incur expenses reasonably deemed significant by Agent or any Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors, secondary obligors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as any Loan Party, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (viii)to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, (xi) to purchase insurance or credit enhancements to insure Agent or Lenders against risks of loss, collection or disposition of Collateral or to provide to Agent or Lenders a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any of the Collateral. Each Loan Party acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Agent or any Lender would not be commercially unreasonable in the exercise by Agent or any Lender of remedies against the Collateral and that other actions or omissions by Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any rights to any Loan Party or to impose any duties on Agent or Lenders that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

(f) For the purpose of enabling Agent to exercise the rights and remedies hereunder, each Borrower and Obligor hereby grants to Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable at any time an Event of Default shall exist or have occurred and for so long as the same is continuing) without payment of royalty or other compensation to any Borrower or Obligor, to use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by any Borrower or Obligor, wherever the same maybe located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(g) At any time an Event of Default has occurred and is continuing, Agent may apply the cash proceeds of Collateral actually received by Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in accordance with the terms hereof, whether or not then due or may hold such proceeds as cash collateral for the Obligations. Loan Parties shall remain liable to Agent and Lenders for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and expenses.

(h) Without limiting the foregoing, upon the occurrence and during the continuance of a Default or an Event of Default, (i) Agent and Lenders may, at Agent's option, and upon the occurrence of an Event of Default at the direction of the Required Lenders, Agent and Lenders shall, without notice, (A) cease making Loans or arranging for Letters of Credit or reduce the lending formulas or amounts of Loans and Letters of Credit available to Borrowers and/or (B) in the case of any Event of Default, terminate any provision of this Agreement providing for any future Loans or Letters of Credit to be made by Agent and Lenders to Borrowers and (ii) Agent may, at its option, establish such Reserves as Agent determines, without limitation or restriction, notwithstanding anything to the contrary contained herein.

SECTION 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW .

11.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements (except as otherwise provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

(b) Notwithstanding anything to the contrary in any Financing Agreement, Loan Parties, Agent and Lenders irrevocably consent and submit to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County in the Borough of Manhattan and United States District Court for the Southern District of New York, whichever Agent may elect, and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Agent and Lenders shall have the right to bring any action or proceeding against any Loan Party or its or their property in the courts of any other jurisdiction which Agent deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against any Loan Party or its or their property).

(c) Each Loan Party hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Agent's option, by service upon any Loan Party (or Administrative Borrower on behalf of such Loan Party) in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, such Loan Party shall appear in answer to such process, failing which such Loan Party shall be deemed in default and judgment may be entered by Agent against such Loan Party for the amount of the claim and other relief requested.

(d) **LOAN PARTIES, AGENT AND LENDERS EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. LOAN PARTIES, AGENT AND LENDERS EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY LOAN PARTY, AGENT OR ANY LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

(e) Agent and Lenders shall not have any liability to any Loan Party (whether in tort, contract, equity or otherwise) for losses suffered by such Loan Party in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Agent and such Lender, that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Agent and Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement. Each Loan Party: (i) certifies that neither Agent, any Lender nor any representative, agent or attorney acting for or on behalf of Agent or any Lender has represented, expressly or otherwise, that Agent and Lenders would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Financing Agreements and (ii) acknowledges that in entering into this Agreement and the other Financing Agreements, Agent and Lenders are relying upon, among other things, the waivers and certifications set forth in this Section 11.1 and elsewhere herein and therein.

11.2 Waiver of Notices. Each Loan Party hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonor with respect to any and all instruments and chattel paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on any Loan Party which Agent or any Lender may elect to give shall entitle such Loan Party to any other or further notice or demand in the same, similar or other circumstances.

11.3 Amendments and Waivers.

(a) Neither this Agreement nor any other Financing Agreement nor any terms hereof or thereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by Agent and the Required Lenders or at Agent's option, by Agent with the authorization of the Required Lenders, and as to amendments to any of the Financing Agreements (other than with respect to any provision of Section 12 hereof), by any Borrower; except, that, no such amendment, waiver, discharge or termination shall:

(i) reduce the interest rate or any fees or extend the time of payment of principal, interest or any fees or reduce the principal amount of any Loan or Letters of Credit, in each case without the consent of each Lender directly affected thereby,

(ii) increase the Commitment of any Lender over the amount thereof then in effect or provided hereunder, in each case without the consent of such Lender,

(iii) release any Collateral (except as expressly required hereunder or under any of the other Financing Agreements or applicable law and except as permitted under Section 12.11(b) hereof), without the consent of Agent and all of Lenders,

(iv) reduce any percentage specified in the definition of Required Lenders, without the consent of Agent and all of Lenders,

(v) except as permitted hereunder, consent to the assignment or transfer by any Loan Party of any of their rights and obligations under this Agreement, without the consent of Agent and all of Lenders,

(vi) contractually subordinate any of the Obligations, without the consent of Agent and all of Lenders, or contractually subordinate Agent's lien on any Collateral (except as permitted under Section 12.11(b) hereof and except as provided in the Intercreditor Agreement), without the consent of Agent and all of Lenders;

(vii) amend, modify or waive any terms of this Section 11.3 or Section 6.4 hereof, without the consent of Agent and all of Lenders, or

(viii) (A) increase the advance rates constituting part of the Borrowing Base or increase the sublimits with respect to the Inventory Loan Limit, the Fuel Inventory Loan Limit, Revolving Loans based on Eligible Inventory or Perishable Inventory or for Letters of Credit, without the consent of Agent and all of Lenders or (B) amend, modify or waive any provisions of the definition of the term Borrowing Base or any of the defined terms referred to in the definition of the term Borrowing Base, in each case if the effect thereof increases the amount of the Borrowing Base, without the consent of Agent and all of Lenders.

(b) Agent and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its or their rights, powers and/or remedies unless such waiver shall be in writing and signed as provided herein. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Agent or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent or any Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

(c) Notwithstanding anything to the contrary contained in Section 11.3(a) above, in connection with any amendment, waiver, discharge or termination, in the event that any Lender whose consent thereto is required shall fail to consent or fail to consent in a timely manner (such Lender being referred to herein as a "Non-Consenting Lender"), but the consent of the Required Lenders to such amendment, waiver, discharge or termination is obtained, then Wells or Administrative Borrower shall have the right, but not the obligation, at any time thereafter, and upon the exercise by Wells or Administrative Borrower of such right, such Non-Consenting Lender shall have the obligation, to sell, assign and transfer to Wells or such Eligible Transferee as Wells or Administrative Borrower may specify, the Commitment of such Non-Consenting Lender and all rights and interests of such Non-Consenting Lender pursuant thereto. Wells or Administrative Borrower shall provide the Non-Consenting Lender with prior written notice of its intent to exercise its right under this Section, which notice shall specify on date on which such purchase and sale shall occur. Such purchase and sale shall be pursuant to the terms of an Assignment and Acceptance (whether or not executed by the Non-Consenting Lender), except that on the date of such purchase and sale, Wells or such Eligible Transferee specified by Wells or Administrative Borrower shall pay to the Non-Consenting Lender (except as Wells and such Non-Consenting Lender may otherwise agree) the amount equal to: (i) the principal balance of the Loans held by the Non-Consenting Lender outstanding as for the close of business on the business day immediately preceding the effective date of such purchase and sale, plus (ii) amounts accrued and unpaid in respect of interest and fees payable to the Non-Consenting Lender to the effective date of the purchase (but in no event shall the Non-Consenting Lender be deemed entitled to any early termination fee). Such purchase and sale shall be effective on the date of the payment of such amount to the Non-Consenting Lender and the Commitment of the Non-Consenting Lender shall terminate on such date. Wells or any Eligible Transferee shall have the right, but not the obligation, to purchase the interest of a Non-Consenting Lender pursuant to this Section 11.3(c).

(d) The consent of Agent shall be required for any amendment, waiver or consent affecting the rights or duties of Agent hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section and the exercise by Agent of any of its rights hereunder with respect to Reserves or Eligible Accounts or Eligible Inventory shall not be deemed an amendment to the advance rates provided for in this Section 11.3.

(e) The consent of Agent and any Bank Product Provider that is providing Bank Products and has outstanding any such Bank Products at such time that are secured hereunder shall be required for any amendment to the priority of payment of Obligations arising under or pursuant to any Hedge Agreements of a Loan Party or other Bank Products as set forth in Section 6.4(a) hereof.

(f) Notwithstanding anything to the contrary contained in Section 11.3(a) above, (i) this Agreement may be amended with the written consent of Agent, Loan Parties and the Lenders providing the Replacement Revolving Loans (as defined below) to permit the refinancing of any portion of the outstanding Revolving Loans ("Refinanced Revolving Loans") with a replacement revolving loan facility ("Replacement Revolving Loans") hereunder; provided, that (A) the aggregate amount of commitments for such Replacement Revolving Loans shall not exceed the aggregate amount of commitments for such Refinanced Revolving Loans, (B) the Applicable Margin with respect to such Replacement Revolving Loans (together with the letter of credit fees and unused line fees applicable to such Replacement Revolving Loans) shall not be higher than those in effect for such Refinanced Revolving Loans immediately prior to such refinancing, (C) the Weighted Average Life to Maturity of such Replacement Revolving Loans shall not be shorter than the Weighted Average Life to Maturity of such Refinanced Revolving Loans at the time of such refinancing, and (D) all other terms applicable to such Replacement Revolving Loans shall be substantially identical to, or less favorable to the Lenders providing such Replacement Revolving Loans than, those applicable to such Refinanced Revolving Loans, except to the extent necessary to provide for covenants and other terms applicable to any period after the latest final maturity of the Revolving Loans in effect immediately prior to such refinancing, and (ii) this Agreement may be amended to extend the maturity date of any or all of the Loans owing to any Lender with the written consent of Agent, Loan Parties and such Lender; provided, that, (A) each Lender shall have the opportunity to participate in such extension on the same terms and conditions as each other Lender, (B) no Lender will have any obligation to extend the maturity date of any Loans owing to such Lender, and (C) Agent may, with the written consent of Loan Parties and each such extending Lender, enter into such amendments to this Agreement and the other Financing Agreements as may be necessary in order to establish new tranches or sub-tranches in respect of the Loans and/or Commitments extended pursuant to this clause (ii) and such technical amendments as may be necessary or appropriate in the reasonable opinion of Agent and Administrative Borrower in connection with the establishment of such new tranches or sub-tranches.

(g) Notwithstanding anything to the contrary contained herein or in any other Financing Agreement, any amendment or modification which implements a Benchmark Replacement or any Benchmark Replacement Conforming Changes may be consummated in accordance with Section 3.4 hereof.

(h) No Real Property shall be taken as collateral for the Obligations unless (i) the Lenders receive at least forty-five (45) days advance notice and each Lender confirms to the Agent that it has completed all flood due diligence, received copies of all flood insurance documentation and confirmed flood insurance compliance as required by applicable flood insurance laws and regulations or as otherwise reasonably satisfactory to such Lender, (ii) appropriate flood insurance provisions have been added to this Agreement in form reasonably satisfactory to the Lenders and (iii) Administrative Borrower shall have consented thereto.

11.4 Waiver of Counterclaims. Each Loan Party waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

11.5 Indemnification. Each Loan Party shall, jointly and severally, indemnify and hold Agent and each Lender, and its officers, directors, agents, employees, advisors and counsel and their respective Affiliates (each such person being an "Indemnitee"), harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including reasonable attorneys' fees and expenses of counsel to Indemnitees, limited to one counsel to Indemnitees, one regulatory counsel to Indemnitees and one local counsel to Indemnitees in each applicable jurisdiction, in each case including legal assistants, and, in the case of a conflict of interest where an Indemnitee affected by such conflict informs Agent of such conflict and thereafter retains its own counsel, of another counsel to such affected Indemnitee) imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened arising out of or related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel except that Loan Parties shall not have any obligation under this Section 11.5 to indemnify an Indemnitee with respect to a matter covered hereby resulting from the gross negligence or willful misconduct of such Indemnitee as determined pursuant to a final, non-appealable order of a court of competent jurisdiction (but without limiting the obligations of Loan Parties as to any other Indemnitee). To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, Loan Parties shall pay the maximum portion which it is permitted to pay under applicable law to Agent and Lenders in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Financing Agreements or any undertaking or transaction contemplated hereby. All amounts due under this Section shall be payable upon demand. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

SECTION 12. THE AGENT

12.1 Appointment, Powers and Immunities. Each Secured Party irrevocably designates, appoints and authorizes Wells to act as Agent hereunder and under the other Financing Agreements with such powers as are specifically delegated to Agent by the terms of this Agreement and of the other Financing Agreements, together with such other powers as are reasonably incidental thereto. Agent (a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Financing Agreements, and shall not by reason of this Agreement or any other Financing Agreement be a trustee or fiduciary for any Secured Party; (b) shall not be responsible to Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any of the other Financing Agreements, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Financing Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Agreement or any other document referred to or provided for herein or therein or for any failure by any Borrower or any Obligor or any other Person to perform any of its obligations hereunder or thereunder; and (c) shall not be responsible to Lenders for any action taken or omitted to be taken by it hereunder or under any other Financing Agreement or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. Agent may deem and treat the payee of any note as the holder thereof for all purposes hereof unless and until the assignment thereof pursuant to an agreement (if and to the extent permitted herein) in form and substance reasonably satisfactory to Agent shall have been delivered to and acknowledged by Agent. Wells Fargo Capital Finance, LLC is hereby designated as the sole lead arranger, manager and bookrunner with respect to the Credit Facility. The designation of Wells Fargo Capital Finance, LLC as sole lead arranger, manager and bookrunner shall not create any rights in favor of it in such capacity nor subject it to any duties or obligations in such capacity.

12.2 Reliance by Agent. Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Agent. As to any matters not expressly provided for by this Agreement or any other Financing Agreement, Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders or all of Lenders as is required in such circumstance, and such instructions of Agent and any action taken or failure to act pursuant thereto shall be binding on all Lenders.

12.3 Events of Default.

(a) Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or an Event of Default or other failure of a condition precedent to the Loans and Letters of Credit hereunder, unless and until Agent has received written notice from a Lender, or a Borrower specifying such Event of Default or any unfulfilled condition precedent, and stating that such notice is a "Notice of Default or Failure of Condition". In the event that Agent receives such a Notice of Default or Failure of Condition, Agent shall give prompt notice thereof to the Lenders. Agent shall (subject to Section 12.7) take such action with respect to any such Event of Default or failure of condition precedent as shall be directed by the Required Lenders to the extent provided for herein; provided, that, unless and until Agent shall have received such directions, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to or by reason of such Event of Default or failure of condition precedent, as it shall deem advisable in the best interest of Lenders. Without limiting the foregoing, and notwithstanding the existence or occurrence and continuance of an Event of Default or any other failure to satisfy any of the conditions precedent set forth in Section 4 of this Agreement to the contrary, unless and until otherwise directed by the Required Lenders, Agent may, but shall have no obligation to, continue to make Loans and issue or cause to be issued Letters of Credit for the ratable account and risk of Lenders from time to time if Agent believes making such Loans or issuing or causing to be issued such Letters of Credit is in the best interests of Lenders.

(b) Except with the prior written consent of Agent, no Lender may assert or exercise any enforcement right or remedy in respect of the Loans, Letters of Credit or other Obligations, as against any Borrower or Obligor or any of the Collateral or other property of any Borrower or Obligor.

12.4 Wells in its Individual Capacity. With respect to its Commitment and the Loans made and Letters of Credit issued or caused to be issued by it (and any successor acting as Agent), so long as Wells shall be a Lender hereunder, it shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Wells in its individual capacity as Lender hereunder. Wells (and any successor acting as Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of business with Borrowers (and any of its Subsidiaries or Affiliates) as if it were not acting as Agent, and Wells and its Affiliates may accept fees and other consideration from any Loan Party and any of its Subsidiaries and Affiliates for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

12.5 Indemnification. Lenders agree to indemnify Agent (to the extent not reimbursed by Borrowers hereunder and without limiting any obligations of Borrowers hereunder) ratably, in accordance with their Pro Rata Shares, for any and all claims of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Financing Agreement or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses that Agent is obligated to pay hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided, that, no Lender shall be liable for any of the foregoing to the extent it arises from the gross negligence or willful misconduct of the party to be indemnified as determined by a final non-appealable judgment of a court of competent jurisdiction. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

12.6 Non-Reliance on Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on Agent or other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrowers and Obligors and has made its own decision to enter into this Agreement and that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any of the other Financing Agreements. Agent shall not be required to keep itself informed as to the performance or observance by any Borrower or Obligor of any term or provision of this Agreement or any of the other Financing Agreements or any other document referred to or provided for herein or therein or to inspect the properties or books of any Borrower or Obligor. Agent will use reasonable efforts to provide Lenders with any information received by Agent from any Borrower or Obligor which is required to be provided to Lenders or deemed to be requested by Lenders hereunder and with a copy of any Notice of Default or Failure of Condition received by Agent from any Borrower or any Lender; provided, that, Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent's own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Except for notices, reports and other documents expressly required to be furnished to Lenders by Agent or deemed requested by Lenders hereunder, Agent shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of any Borrower or Obligor that may come into the possession of Agent.

12.7 Failure to Act. Except for action expressly required of Agent hereunder and under the other Financing Agreements, Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from Lenders of their indemnification obligations under Section 12.5 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

12.8 Additional Loans. Agent shall not make any Revolving Loans or provide any Letters of Credit to any Borrower on behalf of Lenders intentionally and with actual knowledge that such Revolving Loans or Letters of Credit would cause the aggregate amount of the total outstanding Revolving Loans and Letters of Credit to such Borrower to exceed the Borrowing Base of such Borrower, without the prior consent of all Lenders, except, that, Agent may make such additional Revolving Loans or provide such additional Letters of Credit on behalf of Lenders, intentionally and with actual knowledge that such Revolving Loans or Letters of Credit will cause the total outstanding Revolving Loans and Letters of Credit to such Borrower to exceed the Borrowing Base of such Borrower, as Agent may deem necessary or advisable in its discretion, provided, that: (a) the total principal amount of the additional Revolving Loans or additional Letters of Credit to any Borrower which Agent may make or provide after obtaining such actual knowledge that the aggregate principal amount of the Revolving Loans equal or exceed the Borrowing Bases of Borrowers, plus the amount of Special Agent Advances made pursuant to Section 12.11(a)(i) or (ii) hereof then outstanding, shall not exceed the aggregate amount equal to ten (10%) percent of the Maximum Credit, (b) no such additional Revolving Loan or Letter of Credit Accommodation shall be outstanding more than ninety (90) days after the date such additional Revolving Loan or Letter of Credit Accommodation is made or issued (as the case may be), except as the Required Lenders may otherwise agree and (c) the total outstanding principal amount of Loans, Letters of Credit and Special Agent Advances made pursuant to Section 12.11(a)(i) and (ii) hereof shall not exceed the Maximum Credit. Each Lender shall be obligated to pay Agent the amount of its Pro Rata Share of any such additional Revolving Loans or Letters of Credit.

12.9 Concerning the Collateral and the Related Financing Agreements. Each Lender authorizes and directs Agent to enter into this Agreement and the other Financing Agreements. Each Lender agrees that any action taken by Agent or Required Lenders in accordance with the terms of this Agreement or the other Financing Agreements and the exercise by Agent or Required Lenders of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

12.10 Field Audit, Examination Reports and other Information; Disclaimer by Lenders. By signing this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report and report with respect to the Borrowing Base prepared or received by Agent (each field audit or examination report and report with respect to the Borrowing Base being referred to herein as a "Report" and collectively, "Reports"), appraisals with respect to the Collateral and financial statements with respect to Parent and its Subsidiaries received by Agent;

(b) expressly agrees and acknowledges that Agent (i) does not make any representation or warranty as to the accuracy of any Report, appraisal or financial statement or (ii) shall not be liable for any information contained in any Report, appraisal or financial statement;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or any other party performing any audit or examination will inspect only specific information regarding Loan Parties and will rely significantly upon Loan Parties' books and records, as well as on representations of Loan Parties' personnel;

(d) agrees to keep all Reports confidential and strictly for its internal use in accordance with the terms of Section 13.5 hereof, and not to distribute or use any Report in any other manner and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

12.11 Collateral Matters..

(a) Agent may, at its option, from time to time, at any time on or after an Event of Default and for so long as the same is continuing or upon any other failure of a condition precedent to the Loans and Letters of Credit hereunder, make such disbursements and advances ("Special Agent Advances") which Agent, in its sole discretion, (i) deems necessary or desirable either to preserve or protect the Collateral or any portion thereof or (ii) to enhance the likelihood or maximize the amount of repayment by Loan Parties of the Loans and other Obligations, or (iii) to pay any other amount chargeable to any Loan Party pursuant to the terms of this Agreement or any of the other Financing Agreements consisting of (A) costs, fees and expenses and (B) payments to any issuer in respect of Letters of Credit which are issued in accordance with the terms of the other Sections of this Agreement; provided, that, the total outstanding principal amount of the Special Agent Advances pursuant to Section 12.11(a)(i) and (ii) hereof plus the total outstanding principal amount of the additional Loans and Letters of Credit which Agent may make or provide as set forth in Section 12.8 hereof shall not exceed the aggregate amount equal to ten (10%) percent of the Maximum Credit; provided, further, that, the total outstanding principal amount of Loans, Letters of Credit and the Special Agent Advances pursuant to Section 12.11(a)(i) and (ii) hereof shall not exceed the Maximum Credit. Special Agent Advances shall be repayable on demand and together with all interest thereon shall constitute Obligations secured by the Collateral. Special Agent Advances shall not constitute Loans but shall otherwise constitute Obligations hereunder. Interest on Special Agent Advances shall be payable at the Interest Rate then applicable to Base Rate Loans and shall be payable on demand. Without limitation of its obligations pursuant to Section 6.10, each Lender agrees that it shall make available to Agent, upon Agent's demand, in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Special Agent Advance. If such funds are not made available to Agent by such Lender, such Lender shall be deemed a Defaulting Lender and Agent shall be entitled to recover such funds, on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at Agent's option based on the arithmetic mean determined by Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of the three leading brokers of Federal funds transactions in New York City selected by Agent) and if such amounts are not paid within three (3) days of Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Base Rate Loans.

(b) Lenders hereby irrevocably authorize Agent to release, and (except in the case of clauses (v), (vi) or (vii) below) upon the request of Administrative Borrower, Agent hereby agrees to release, any security interest in, mortgage or lien upon, any of the Collateral: (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations (other than unasserted contingent indemnification claims) and delivery of cash collateral to the extent required under Section 13.1 below, (ii) constituting property being sold, transferred or disposed of in connection with a Disposition permitted by Section 9.7 hereof (other than Dispositions from a Loan Party to another Loan Party) if Administrative Borrower, any other Loan Party certifies to Agent that the Disposition is made in compliance with Section 9.7 hereof (and Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the Capital Stock of any Guarantor or any Propco is sold in connection with a Disposition permitted by Section 9.7 hereof, such Guarantor or Propco shall cease to be a Guarantor under this Agreement and the other Financing Agreements, (iii) constituting property in which any Loan Party did not own an interest at the time the security interest, mortgage or lien was granted or at any time thereafter, (iv) ~~constituting property pledged to a third party if Administrative Borrower, any other Loan Party certifies to Agent that such pledge is made in compliance with Section 9.8(l) hereof (and Agent may rely conclusively on any such certificate, without further inquiry)~~[reserved], (v) having a value in the aggregate in any twelve (12) month period of less than $1,000,000, and to the extent Agent may release its security interest in and lien upon any such Collateral pursuant to the sale or other disposition thereof, such sale or other disposition shall be deemed consented to by Lenders, (vi) if required or permitted under the terms of any of the other Financing Agreements, including ~~any~~the Intercreditor Agreement and any other intercreditor agreement, or (vii) approved, authorized or ratified in writing by all of Lenders. To the extent that Agent is authorized to release its lien upon any Collateral pursuant to this Section 12.11(b), Agent is authorized to subordinate its lien upon such Collateral. Except as provided above, Agent will not release or subordinate any security interest in, mortgage or lien upon, any of the Collateral without the prior written authorization of all of Lenders. Upon request by Agent at any time, Lenders will promptly confirm in writing Agent's authority to release particular types or items of Collateral pursuant to this Section. Nothing contained herein shall be construed to require the consent of any Bank Product Provider to any release of any Collateral or termination of security interests in any Collateral, except for the cash collateral delivered pursuant to Section 13.1(a) hereof for Obligations arising under or in connection with any Bank Products.

(c) Without any manner limiting Agent's authority to act without any specific or further authorization or consent by the Required Lenders, each Lender agrees to confirm in writing, upon request by Agent, the authority to release Collateral conferred upon Agent under this Section. Agent shall (and is hereby irrevocably authorized by Lenders to) execute and deliver to the applicable Loan Party, in form and substance reasonably satisfactory to Agent, such documents as may be necessary or as such Loan Party may reasonably request to evidence the release of the security interest, mortgage or liens granted to Agent upon any Collateral to the extent set forth above; provided, that, (i) Agent shall not be required to execute any such document on terms which, in Agent's opinion, would expose Agent to liability or create any obligations or entail any consequence other than the release of such security interest, mortgage or liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any security interest, mortgage or lien upon (or obligations of any Loan Party in respect of) the Collateral retained by such Loan Party.

(d) Agent shall have no obligation whatsoever to any Lender or any other Person to investigate, confirm or assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or has been encumbered, or that any particular items of Collateral meet the eligibility criteria applicable in respect of the Loans or Letters of Credit hereunder, or whether any particular reserves are appropriate, or that the liens and security interests granted to Agent pursuant hereto or any of the Financing Agreements or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent in this Agreement or in any of the other Financing Agreements, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, subject to the other terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its discretion, given Agent's own interest in the Collateral as a Lender and that Agent shall have no duty or liability whatsoever to any other Lender.

(e) Without limiting the generality of the foregoing, each Lender consents to the HPT Letter Agreements (as defined below) and any other agreements delivered pursuant to Section 9.12(d) hereof (in each case as in effect on the date hereof), and agrees to be bound by the terms thereof, whether or not such Lender executes the HPT Letter Agreements or any such other agreements, and consents to any amendments or modifications thereto (so long as after giving effect thereto, the HPT Letter Agreements or such other agreements are substantially similar to those as in effect on the date hereof). As used herein, "HPT Letter Agreements" shall mean, collectively, the Letter Agreements referred to in Section 1.63 hereof, as the same may be amended or otherwise modified from time to time.

(f) Without limiting the generality of the foregoing, each Secured Party (other than Agent) (i) authorizes Agent to enter into the Intercreditor Agreement on behalf of such Secured Party and (ii) agrees that it will be bound by the terms and conditions of the Intercreditor Agreement, whether or not such Secured Party executes such agreement.

12.12 Agency for Perfection. Each Lender hereby appoints Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral of Agent in assets which, in accordance with Article 9 of the UCC can be perfected only by possession (or where the security interest of a secured party with possession has priority over the security interest of another secured party) and Agent and each Lender hereby acknowledges that it holds possession of any such Collateral for the benefit of Agent as secured party. Should any Lender obtain possession of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver such Collateral to Agent or in accordance with Agent's instructions.

12.13 Successor Agent. Agent may resign as Agent upon thirty (30) days' notice to Lenders and Parent. If Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with Lenders and Parent, a successor agent from among Lenders. Upon the acceptance by the Lender so selected of its appointment as successor agent hereunder, such successor agent shall succeed to all of the rights, powers and duties of the retiring Agent and the term "Agent" as used herein and in the other Financing Agreements shall mean such successor agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 12 shall inure to its benefit as to any actions taken or omitted by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days after the date of a retiring Agent's notice of resignation, the retiring Agent's resignation shall nonetheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

12.14 Other Agent Designations. Agent may at any time and from time to time determine that a Lender may, in addition, be a "Co-Agent", "Syndication Agent", "Documentation Agent" or similar designation hereunder and enter into an agreement with such Lender to have it so identified for purposes of this Agreement. Any such designation shall be effective upon written notice by Agent to Administrative Borrower of any such designation. Any Lender that is designated as a Co-Agent, Syndication Agent, Documentation Agent or such similar designation by Agent shall have no right, power, obligation, liability, responsibility or duty under this Agreement or any of the other Financing Agreements other than those applicable to all Lenders as such. Without limiting the foregoing, the Lenders so identified shall not have or be deemed to have any fiduciary relationship with any Lender and no Lender shall be deemed to have relied, nor shall any Lender rely, on a Lender so identified as a Co-Agent, Syndication Agent, Documentation Agent or such similar designation in deciding to enter into this Agreement or in taking or not taking action hereunder.

12.15 Credit Bids. Lenders hereby irrevocably authorize Agent, with the consent of the Required Lenders, to submit a bid at a public or private sale in connection with the purchase of all or any portion of the Collateral, in which any of the Obligations may be used and applied as a credit on account of the purchase price (a "credit bid") and purchase at any such sale (either directly or through one or more entities established for such purpose) all or any portion of the Collateral on behalf of and for the benefit of the Lenders (but not as agent for any individual Lender or Lenders, unless the Required Lenders shall otherwise agree in writing). Each Lender agrees that, except with the written consent of the Agent and the Required Lenders, it will not exercise any right that it might otherwise have to credit bid at any sales of all or any portion of the Collateral conducted under the provisions of the UCC or the United States Bankruptcy Code, foreclosure sales or other similar dispositions of Collateral.

12.16 Agent May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, Agent (irrespective of whether the principal of any Obligations or amounts owing in respect of Letters of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on any Loan Party) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Obligations and all other Obligations (other than obligations under Bank Products to which Agent is not a party) that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, Issuing Lenders and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, Issuing Banks and Agent and their respective agents and counsel and all other amounts due Lenders, Issuing Banks and Agent allowed in such judicial proceeding); and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to Lenders and Issuing Banks, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent.

(b) Nothing contained herein shall be deemed to authorize Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Agent to vote in respect of the claim of any Lender in any such proceeding.

SECTION 13. TERM OF AGREEMENT; MISCELLANEOUS

13.1 Term.

(a) This Agreement and the other Financing Agreements shall become effective as of the date set forth on the first page hereof and shall continue in full force and effect for a term ending on the ~~date five (5) years from the Amendment No. 3 Effective Date (the "~~Maturity Date~~")~~. Borrowers may terminate this Agreement at any time upon at least ten (10) days prior written notice to Agent (which notice shall be irrevocable; provided, that, a notice of termination delivered by Borrowers may state that such notice is conditioned upon the effectiveness of the closing of another credit facility or the closing of a securities offering, merger or acquisition or asset sale, in which case such notice may be revoked by Borrowers (by notice to Agent on or prior to the specified termination date) if such condition is not satisfied) and Agent may, at its option, and shall at the direction of Required Lenders, terminate this Agreement at any time upon the occurrence and during the continuance of an Event of Default. Upon the Maturity Date or any other effective date of termination of the Financing Agreements, Borrowers shall pay to Agent all outstanding and unpaid Obligations and shall furnish cash collateral (including Letter of Credit Collateralization) to Agent in such amounts as Agent determines are reasonably necessary to secure Agent and Lenders from loss, cost, damage or expense, including reasonable attorneys' fees and expenses, in connection with any contingent Obligations (other than unasserted contingent indemnification claims), including issued and outstanding Letters of Credit and checks or other payments provisionally credited to the Obligations and/or as to which Agent or any Lender has not yet received final and indefeasible payment and any continuing obligations of Agent or any Lender pursuant to any Deposit Account Control Agreement and for any of the Obligations arising under or in connection with any Bank Products in such amounts as the party providing such Bank Products may reasonably require (unless such Obligations arising under or in connection with any Bank Products are paid in full in cash and terminated in a manner reasonably satisfactory to such other party). The amount of such cash collateral as to any Letters of Credit shall be in accordance with the Letter of Credit Collateralization. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Federal funds to the Agent Payment Account or such other bank account of Agent, as Agent may, in its discretion, designate in writing to Administrative Borrower for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by Borrowers to the Agent Payment Account or other bank account designated by Agent are received in such bank account later than 12:00 noon, Chicago, Illinois time.

(b) No termination of this Agreement or the other Financing Agreements shall relieve or discharge any Loan Party of its respective duties, obligations and covenants under this Agreement or the other Financing Agreements until all of the Obligations (other than unasserted contingent indemnification claims) have been fully and finally discharged and paid, and Agent's continuing security interest in the Collateral and the rights and remedies of Agent and Lenders hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all of the Obligations (other than unasserted contingent indemnification claims) have been fully and finally paid and satisfied in full in immediately available funds and the Commitments have been terminated. Upon termination of this Agreement in accordance with its terms, the payment and satisfaction in full of all of the Obligations (other than unasserted contingent indemnification claims) and the termination of the Commitments, Agent shall authorize the filing of UCC termination statements by Loan Parties (or their designees) with respect to any UCC financing statements with respect to the Collateral naming any Loan Party, as debtor, and Agent, as secured party.

13.2 Interactive Provisions.

(a) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(b) All references to any Loan Party, Agent and Lenders pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns.

(c) The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(d) The word "including" when used in this Agreement shall mean "including, without limitation" and the word "will" when used in this Agreement shall be construed to have the same meaning and effect as the word "shall".

(e) An Event of Default shall continue or be continuing until such Event of Default is waived in accordance with Section 11.3 or is cured in a manner satisfactory to Agent, if such Event of Default is capable of being cured as determined by Agent.

(f) All references to the term "good faith" used herein when applicable to Agent or any Lender shall mean, notwithstanding anything to the contrary contained herein or in the UCC, honesty in fact in the conduct or transaction concerned. Loan Parties shall have the burden of proving any lack of good faith on the part of Agent or any Lender alleged by any Loan Party at any time.

(g) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the financial statements of Parent most recently received by Agent prior to the Amendment No. 3 Effective Date. Notwithstanding anything to the contrary contained in GAAP or any interpretations or other pronouncements by the Financial Accounting Standards Board or otherwise, the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is not only unqualified but also does not include any explanation, supplemental comment or other comment concerning the ability of the applicable person to continue as a going concern or the scope of the audit.

(h) 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".

(i) Unless otherwise expressly provided herein, (i) references herein to any agreement, document or instrument shall be deemed to include all subsequent amendments, modifications, supplements, extensions, renewals, restatements or replacements with respect thereto, but only to the extent the same are not prohibited by the terms hereof or of any other Financing Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, recodifying, supplementing or interpreting the statute or regulation.

(j) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(k) This Agreement and other Financing Agreements may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(l) This Agreement and the other Financing Agreements are the result of negotiations among and have been reviewed by counsel to Agent and the other parties, and are the products of all parties. Accordingly, this Agreement and the other Financing Agreements shall not be construed against Agent or Lenders merely because of Agent's or any Lender's involvement in their preparation.

13.3 Notices. All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to any Loan Party: TravelCenters of America LLC

24601 Center Ridge Road, Suite 200
Westlake, Ohio, 44145-5639
Attention: Andrew J. Rebholz or
Chief Financial Officer
Telephone No.: (440) 808-3265
Telecopy No.: (440) 808-3301

with a copy to:

TravelCenters of America LLC
Two Newton Place
255 Washington Street
Newton, Massachusetts 02458
Attention: Mark R. Young, Esq. or
General Counsel
Telephone No.: (617) 796-8157
Telecopy No.: (617) 969-4697

If to Agent: Wells Fargo Capital Finance, LLC
10 South Wacker Drive
Chicago, Illinois 60606-4202
Attention: Portfolio Manager
Telephone No.: (312) 332-0420
Telecopy No.: (312) 332-0424

13.4 Partial Invalidity. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

13.5 Confidentiality.

(a) Agent and each Lender shall use all reasonable efforts to keep confidential, in accordance with its customary procedures for handling confidential information and safe and sound lending practices, any non-public information supplied to it by any Borrower pursuant to this Agreement, provided, that, nothing contained herein shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order, (ii) to the extent requested by any bank examiners and other regulators (including any self-regulatory authority such as the National Association of Insurance Commissioners), auditors and/or accountants, (iii) in connection with any litigation or other adversarial proceeding to which Agent or such Lender is a party or in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Financing Agreement, (iv) to any member of the Lender Group (including the Bank Product Providers) or any Participant (or prospective Lender or Participant) or to any Affiliate or its or its Affiliate's directors, officers, employees, agents and advisors thereof so long as such Person shall have agreed to treat such information as confidential in accordance with this Section 13.5, or (v) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group or any Participant (or prospective Lender or Participant).

(b) In the event that Agent or any Lender receives a request or demand to disclose any confidential information pursuant to any subpoena or court order, Agent or such Lender, as the case may be, agrees (i) to the extent permitted by applicable law or if permitted by applicable law, to the extent Agent or such Lender determines in good faith that it will not create any risk of liability to Agent or such Lender, Agent or such Lender will promptly notify Administrative Borrower of such request so that Administrative Borrower may seek a protective order or other appropriate relief or remedy and (ii) if disclosure of such information is required, disclose such information and, subject to reimbursement by Borrowers of Agent's or such Lender's expenses, cooperate with Administrative Borrower in the reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information which Administrative Borrower so designates, to the extent permitted by applicable law or if permitted by applicable law, to the extent Agent or such Lender determines in good faith that it will not create any risk of liability to Agent or such Lender.

(c) In no event shall this Section 13.5 or any other provision of this Agreement, any of the other Financing Agreements or applicable law be deemed: (i) to apply to or restrict disclosure of information that has been or is made public by any Loan Party or any third party or otherwise becomes generally available to the public other than as a result of a disclosure in violation hereof, (ii) to apply to or restrict disclosure of information that was or becomes available to Agent or any Lender (or any Affiliate of any Lender) on a non-confidential basis from a person other than a Loan Party, (iii) to require Agent or any Lender to return any materials furnished by a Loan Party to Agent or a Lender or prevent Agent or a Lender from responding to routine informational requests in accordance with the Code of Ethics for the Exchange of Credit Information promulgated by The Robert Morris Associates or other applicable industry standards relating to the exchange of credit information. The obligations of Agent and Lenders under this Section 13.5 shall supersede and replace the obligations of Agent and Lenders under any confidentiality letter signed prior to the date hereof.

(d) Notwithstanding anything to the contrary set forth herein or in any of the other Financing Agreements or any other written or oral understanding or agreement, any obligations of confidentiality contained herein, in any of the other Financing Agreements or any such other understanding or agreement do not apply and have not applied from the commencement of discussions between the parties to the tax treatment and tax structure of the transactions contemplated herein (and any related transactions or arrangements), and each party (and each of its employees, representatives, or other agents) may disclose to any and all persons the tax treatment and tax structuring of the transactions contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulation Section 1.6011-4; provided, that, each party recognizes that the privilege that it may, in its discretion, maintain with respect to the confidentiality of a communication relating to the transactions contemplated herein, including a confidential communication with its attorney or a confidential communication with a federally authorized tax practitioner under Section 7525 of the Code, is not intended to be affected by the foregoing. Loan Parties do not intend to treat the Loans and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). In the event Loan Parties determine to take any action inconsistent with such intention, it will promptly notify Agent thereof. Each Loan Party acknowledges that one or more of Lenders may treat its Loans as part of a transaction that is subject to Treasury Regulation Section 1.6011-4 or Section 301.6112-1, and the Agent and such Lender or Lenders, as applicable, may file such IRS forms or maintain such lists and other records as they may determine is required by such Treasury Regulations.

(e) Anything in this Agreement to the contrary notwithstanding, Agent and any Lender may disclose information concerning the terms and conditions of this Agreement and the other Financing Agreements to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent or any Lender.

(f) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") available to the Lenders by posting the communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of its Affiliates have any liability to the Loan Parties, any Lender or any other person for damages of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

13.6 Successors. This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Agent, Lenders, Loan Parties and their respective successors and assigns, except that Borrower may not assign its rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of Agent and Lenders. Any such purported assignment without such express prior written consent shall be void. No Lender may assign its rights and obligations under this Agreement without the prior written consent of Agent, except as provided in Section 13.7 below. The terms and provisions of this Agreement and the other Financing Agreements are for the purpose of defining the relative rights and obligations of Loan Parties, Agent and Lenders with respect to the transactions contemplated hereby and there shall be no third party beneficiaries of any of the terms and provisions of this Agreement or any of the other Financing Agreements.

13.7 Assignments; Participations.

(a) Each Lender may, with the prior written consent of Agent (which consent shall not be unreasonably withheld or delayed), assign all or, if less than all, a portion equal to at least $10,000,000 (or such lesser amount as Agent may agree) in the aggregate for the assigning Lender, of such rights and obligations under this Agreement to one or more Eligible Transferees (but not including for this purpose any assignments in the form of a participation), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Acceptance; provided, that, (i) such transfer or assignment will not be effective until recorded by Agent on the Register and (ii) Agent shall have received for its sole account payment of a processing fee from the assigning Lender or the assignee in the amount of $5,000.

(b) Agent, acting solely for this purpose as a non-fiduciary agent of Loan Parties, shall maintain a register of the names and addresses of Lenders, their Commitments and the principal amount of their Loans (the "Register"). Agent shall also maintain a copy of each Assignment and Acceptance delivered to and accepted by it and shall modify the Register to give effect to each Assignment and Acceptance. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and any Borrowers, Obligors, Agent and Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Administrative Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and to the other Financing Agreements and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations (including, without limitation, the obligation to participate in Letters of Credit) of a Lender hereunder and thereunder and the assigning Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement.

(d) By execution and delivery of an Assignment and Acceptance, the assignor and assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any of the other Financing Agreements or the execution, legality, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Financing Agreements furnished pursuant hereto, (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower, Obligor or any of their Subsidiaries or the performance or observance by any Borrower or Obligor of any of the Obligations; (iii) such assignee confirms that it has received a copy of this Agreement and the other Financing Agreements, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such assignee will, independently and without reliance upon the assigning Lender, 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 this Agreement and the other Financing Agreements, (v) such assignee appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Financing Agreements as are delegated to Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Financing Agreements are required to be performed by it as a Lender. Agent and Lenders may furnish any information concerning any Borrower or Obligor in the possession of Agent or any Lender from time to time to assignees and Participants.

(e) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Financing Agreements (including, without limitation, all or a portion of its Commitments and the Loans owing to it and its participation in the Letters of Credit, without the consent of Agent or the other Lenders); provided, that, (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment hereunder) and the other Financing Agreements shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and Loan Parties, the other Lenders and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Financing Agreements, (iii) the Participant shall not have any rights under this Agreement or any of the other Financing Agreements (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by any Borrower or Obligor hereunder shall be determined as if such Lender had not sold such participation, and (iv) such Lender shall collect from each Participant documentation and representations described in Section 6.13(d) and Section 6.13(i) on behalf of itself, the Agent, and the Loan Parties, such that the Agent and Loan Parties may rely on the documentation collected by such Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Loan Parties, maintain (or cause to be maintained) a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in any obligations (the "Participant Register"), provided, however, that no Lender shall have any obligation to disclose all or any portion of such Participant Register (including the identity of any Participant or any information relating to any Participant's interest in any obligations) to any Person except to the extent that such disclosure is necessary to establish that such obligation is in registered form under both Section 5f.103-1(c) and Proposed Section 1.163-5(b) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register. Also, notwithstanding anything in this Agreement to the contrary, neither the Agent nor any Loan Party shall be liable to any Lender or Participant for any taxes attributable to a Lender's failure to maintain a Participant Register as provided in this Section 13.7(e).

(f) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans hereunder to a Federal Reserve Bank in support of borrowings made by such Lenders from such Federal Reserve Bank; provided, that, no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee for such Lender as a party hereto.

(g) Loan Parties shall assist Agent or any Lender permitted to sell assignments or participations under this Section 13.7 in whatever manner reasonably necessary in order to enable or effect any such assignment or participation, including (but not limited to) the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested and the delivery of informational materials, appraisals or other documents for, and the participation of relevant management in meetings and conference calls with, potential Lenders or Participants. Borrowers shall certify the correctness, completeness and accuracy, in all material respects, of all descriptions of Loan Parties and their affairs provided, prepared or reviewed by any Loan Party that are contained in any selling materials and all other information provided by it and included in such materials.

13.8 Patriot Act; Due Diligence. Each Lender hereby notifies Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the requirements of the Patriot Act and any other applicable law. Promptly following any request therefor, Loan Parties shall provide information and documentation reasonably requested by Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall be for the account of Borrowers.

13.9 Entire Agreement. This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

13.10 Counterparts, Etc. This Agreement or any of the other Financing Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement or any of the other Financing Agreements by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement or any of such other Financing Agreements. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

13.11 Replacement of Certain Lenders. If any Lender requests compensation under Section 3.3(a), (b) or (c) hereof, if Borrowers are required to pay any additional amount to any Lender or Governmental Authority pursuant to Section 6.13 hereof, or if any Lender is a Defaulting Lender, then within sixty (60) days thereafter, Administrative Borrower may, at its sole expense and effort, upon notice to such Lender and Agent, replace such Lender by requiring such Lender to assign and delegate (and such Lender shall be obligated to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in Section 13.7), all of its interests, rights and obligations under this Agreement to an Eligible Transferee that shall assume such obligations, provided, that, (i) Administrative Borrower has received the prior written consent of Agent and each Issuing Bank (which consent shall not be unreasonably withheld, conditioned or delayed), (ii) such Lender shall have received payment of an amount equal to the outstanding principal amount of its Loans and participations in Letters of Credit that it has funded, if any, accrued interest thereon, accrued fees and other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal) and Administrative Borrower (in the case of accrued interest, fees and other amounts, including amounts under Section 3.3(d) hereof), (iii) such assignment will result in a reduction in such compensation and payments, and (iv) such assignment does not conflict with applicable laws or regulations. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Administrative Borrower to require such assignment and delegation cease to apply. Nothing in this Section 13.11 shall impair any other rights that any Borrower or Agent may have against any Lender that is a Defaulting Lender.

13.12 Acknowledgement and Consent to Bail-In of ~~EEA~~Affected Financial Institutions. Notwithstanding anything to the contrary in any Financing Agreement or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any ~~EEA~~Affected Financial Institution arising under any Financing Agreement, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of ~~an EEA~~the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an ~~EEA~~Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such ~~EEA~~Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Agreement; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of ~~any~~ ~~EEA~~the applicable Resolution Authority.

13.13 Acknowledgement Regarding Any Supported QFCs. To the extent that the ~~Loan Documents~~Financing Agreements provide support, through a guarantee or otherwise, for any Hedge Agreement or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the ~~Loan Documents~~Financing Agreements and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States.

In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the ~~Loan Documents~~Financing Agreements that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the ~~Loan Documents~~Financing Agreements were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 13.13, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

13.14 Keepwell(a). Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Financing Agreements in respect of Swap Obligations (provided, that, each Qualified ECP Guarantor shall only be liable under this Section 13.14 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 13.14, or otherwise under any Financing Agreement, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 13.14 shall remain in full force and effect until payment in full of the Obligations. Each Qualified ECP Guarantor intends that this Section 13.14 constitutes, and this Section 13.14 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

13.15 Intercreditor Agreement. In the event of any conflict between the terms of any Financing Agreements and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall control.

SECTION 14. ACKNOWLEDGMENT AND RESTATEMENT

14.1 Acknowledgment of Security Interests.

(a) Loan Parties hereby acknowledge, confirm and agree that Agent has and shall continue to have a security interest in and lien upon the Collateral heretofore granted to Agent in connection with the Existing Loan Agreement by each Loan Party which is a party thereto.

(b) The liens and security interests of Agent in the Collateral granted by each Borrower and Existing Guarantor pursuant to the Existing Loan Agreement shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such liens and security interests under or in connection with the Existing Loan Agreement.

14.2 Existing Loan Agreement. Loan Parties hereby acknowledge, confirm and agree that, immediately prior to giving effect to this Agreement, (a) the Existing Loan Agreement is in full force and effect as of the date hereof, and (b) the agreements and obligations of Loan Parties contained in the Existing Loan Agreement constitute the legal, valid and binding obligations of Loan Parties against them in accordance with their respective terms and Loan Parties have no valid defense to the enforcement of such obligations.

14.3 Restatement.

(a) Except as otherwise stated in this Section 14, as of the date hereof, the terms, conditions, agreements, covenants, representations and warranties set forth in the Existing Loan Agreement are hereby amended and restated in their entirety, and as so amended and restated, replaced and superseded, by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement. The amendment and restatement contained herein shall not, in and of itself, in any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the Indebtedness and other obligations and liabilities of Loan Parties evidenced by or arising under the Existing Loan Agreement (except to the extent any such Indebtedness, obligations or liabilities are actually paid or performed on the date hereof), and the liens securing such Indebtedness and other obligations and liabilities, which shall not in any manner be impaired, limited, terminated, waived or released.

(b) All of the Obligations in respect of the Existing Loans and Existing Letters of Credit (to the extent not paid) and all accrued and unpaid interest and fees with respect thereto (to the extent not actually paid pursuant to this Agreement) shall be deemed to be Obligations of Loan Parties pursuant to the terms hereof.

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Exhibit B

AMENDMENT NO. 4 TO
AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT

THIS AMENDMENT NO. 4 TO AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT, dated as of December 14, 2020 (this "Amendment"), is by and among TravelCenters of America Inc., a Maryland corporation formerly known as TravelCenters of America LLC ("Parent" or "Holding"), TA Operating LLC, a Delaware limited liability company ("TA Operating" and together with Parent, each a "Pledgor" and collectively, "Pledgors"), and Wells Fargo Capital Finance, LLC, a Delaware limited liability company, in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the Secured Parties (in such capacity, "Pledgee").

W I T N E S S E T H:

WHEREAS, Pledgee, Lenders, Parent and TA Operating (TA Operating and Parent are individually each a "Borrower" and collectively, "Borrowers") have entered into financing arrangements pursuant to which Pledgee and Lenders may make loans and advances and provide other financial accommodations to Borrowers as set forth in the Amended and Restated Loan and Security Agreement, dated October 25, 2011, by and among Pledgee, Lenders, Borrowers, Holding and certain other affiliates of Borrowers (as heretofore modified and as the same as may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement") and the other Financing Agreements;

WHEREAS, to secure the payment and performance of the Obligations, Pledgors previously executed and delivered in favor of Pledgee the Amended and Restated Pledge and Security Agreement, dated as of October 25, 2011, as amended by Amendment No. 1 to Amended and Restated Pledge and Security Agreement, dated as of February 26, 2014, Amendment No. 2 to Amended and Restated Pledge and Security Agreement dated as of February 27, 2014, and Amendment No. 3 to Amended and Restated Pledge and Security Agreement dated as of February 7, 2020 (as amended hereby or as the same may hereafter be amended, modified, supplemented, renewed, restated or replaced, the "Pledge Agreement");

WHEREAS, effective as of August 1, 2019, Parent has converted from a Delaware limited liability company formerly known as TravelCenters of America LLC to a Maryland corporation known as TravelCenters of America Inc., as set forth in the Plan of Conversion, adopted as of July 29, 2019, duly authorized by the board of directors of the Parent;

WHEREAS, on September 9, 2020, TravelCenters of America Holding Company LLC was merged with and into Parent;

WHEREAS, Pledgee, Lenders, Pledgors and certain affiliated companies are contemporaneously herewith entering into Amendment No. 4 to Amended and Restated Loan and Security Agreement and Release, dated of even date herewith ("Amendment No. 4"); and

WHEREAS, in accordance with the provisions of Amendment No. 4, Pledgors and Pledgee have agreed to enter into this Amendment;

NOW, THEREFORE, in consideration of the premises and the representations, warranties and covenants set forth herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Defined Terms. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein shall have the meaning given to such terms in the Loan Agreement or the Pledge Agreement, as applicable.

2. Amendment. The Pledge Agreement is hereby amended by adding the following new Section 9 immediately following Section 8:

"9. "Gaming Authorities, Approvals and Laws. Notwithstanding anything to the contrary contained herein or in any other Financing Agreement,

(a) the Pledgee, on behalf of the Secured Parties, acknowledges that certain of its rights, remedies and powers under this Pledge Agreement (including the exercise of remedial rights upon the Pledged Property and voting of equity interests in (or otherwise taking control of) Issuers with a Gaming Approval) and, solely in respect of the Pledged Property, under the other Financing Agreements, may be exercised only to the extent that (i) the exercise thereof does not violate any Gaming Laws and (ii) all necessary approvals, licenses and consents from the Gaming Authority required in connection therewith are obtained. For purposes of this clause (a), (x) "Gaming Approval" shall mean any and all required approvals, authorizations, licenses, permits, consents, findings of suitability, registrations, clearances, exemptions and waivers of or from any Gaming Authority relating to the offering or conduct of gaming activities, or the receipt or participation in gaming revenue, (y) "Gaming Authority" shall mean, collectively, those state, local and other governmental, regulatory and administrative authorities, agencies, commissions, boards, and bodies responsible for or involved in the regulation of gaming activities or the ownership of an interest in any entity that conducts gaming activity in any jurisdiction, including, but not limited to, the Illinois Gaming Board, the Pennsylvania Gaming Control Board, the Louisiana Gaming Control Board, the Nevada Gaming Control Board, the Nevada Gaming Control Board and the Nevada Gaming Commission and (z) "Gaming Laws" means all applicable constitutions, treaties, laws, rates, regulations and orders and statutes pursuant to which any Gaming Authority possesses regulatory, licensing or permit authority over any casino, racing, gambling, wagering or other gaming business or activities and all rules, rulings, orders, ordinances, regulations of any Gaming Authority applicable to any casino, racing, gambling, wagering or other gaming business or activities of any Person in any jurisdiction, as in effect from time to time, including the policies, interpretations and administration thereof by the Gaming Authorities;

(b) without limiting clause (a) above, the Pledgee, on behalf of the Secured Parties, acknowledges that a transfer of ownership of the Pledged Interests issued by TA Operating may cause the transfer of ownership of the video gaming licenses held by TA Operating LLC d/b/a Travel Centers of America, license numbers 0100515849 (Egan); 0906515551 (Greenwood); 0904515852 (Shreveport); and 3301515851 (Tallulah) issued by the Louisiana Gaming Control Board, to comply with the requirements contained in the Louisiana Revised Statutes, Title 27, Louisiana Gaming Control Law, Chapter 8, Video Draw Poker Devices Control Law, regarding the transfer of ownership and that the failure to comply with same may cause such licenses to be subject to suspension, revocation and/or administrative action;

(c) without limiting clause (a) above, the Pledgee, on behalf of the Secured Parties, acknowledges and agrees that:

(i) the pledge of the Pledged Interests of TA Nevada under the Gaming Laws applicable in the State of Nevada (the "Nevada Gaming Laws"), pursuant to this Pledge Agreement or any other Financing Agreement, will not be effective without the prior approval of the Nevada Gaming Control Board and the Nevada Gaming Commission (the "Nevada Gaming Authorities"), and no certificates evidencing any such Pledged Interests may be delivered to the Pledgee until such approval has been obtained;

(ii) in the event that the Pledgee exercises one or more of the remedies set forth in this Pledge Agreement or in any other Financing Agreement with respect to the Pledged Interests of TA Nevada, including, without limitation, the foreclosure, transfer, sale, distribution or other disposition of any interest therein (except back to the applicable Pledgor), the exercise of voting and consensual rights, and any other resort to or enforcement of the security interest in such Pledged Interests, such action will require the separate and prior approval of the Nevada Gaming Authorities, or the licensing of the Pledgee or any transferee thereof unless such licensing requirement is waived thereby;

(iii) the Pledgee, and any custodial agent of the Pledgee in the State of Nevada, will be required to comply with the conditions, if any, imposed by the Nevada Gaming Authorities in connection with their approval of the pledge granted hereunder or the pledge of the Pledged Interests of TA Nevada under any other Financing Agreement, including, without limitation, requirements that the Pledgee or its custodial agent maintain the certificates evidencing the Pledged Interests of TA Nevada at a location in Nevada provided to the Nevada Gaming Authorities, and that the Pledgee or its custodial agent permit agents or employees of the Nevada Gaming Authorities to inspect such certificates upon request during normal business hours;

(iv) neither the Pledgee nor any custodial agent of the Pledgee will be permitted to surrender possession of any Pledged Interests of TA Nevada to any Person other than the applicable Pledgor thereof without the prior approval of the Nevada Gaming Authorities, or as otherwise permitted by the Nevada Gaming Laws;

(v) any approval of the Nevada Gaming Authorities of this Pledge Agreement or the pledge of the Pledged Interests of TA Nevada hereunder or (solely in respect of the Pledged Interests) under any other Financing Agreement, or any amendment hereto or thereto, does not constitute approval, either express or implied, of the Pledgee to take any actions or exercise any remedies provided for in this Pledge Agreement or (solely in respect of the Pledged Interests) any other Financing Agreement, for which separate approval by the Nevada Gaming Authorities may be required by the Nevada Gaming Laws;

(vi) the Pledgee, the Secured Parties and their respective successors and assigns are subject to being called forward by the Nevada Gaming Authorities in their sole and absolute discretion, for licensing or a finding of suitability or qualification in accordance with the requirements of the Nevada Gaming Authorities; and

(vii) the Pledgee, on behalf of the Secured Parties, acknowledges that (A) this Pledge Agreement and (solely in respect of the Pledged Interests) the other Financing Agreements are subject to Nevada Gaming Laws, (B) the Secured Parties are subject to the jurisdiction of the Nevada Gaming Authorities, in their discretion, for licensing, qualification or findings of suitability or to file or provide other information in accordance with the requirements of the Nevada Gaming Authorities, and (C) all rights, remedies and powers in or under this Pledge Agreement and (solely in respect of the Pledged Interests) the other Financing Agreements with respect to the Pledged Interests of TA Nevada (including the pledge and delivery of such Pledged Interests), and the ownership and operation of gaming facilities in Nevada may be subject to the jurisdiction of the Nevada Gaming Authorities, and may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of the Nevada Gaming Laws and only to the extent that required approvals (including prior approvals), if any, are obtained from the Nevada Gaming Authorities; and

(d) Each of the representations, warranties and covenants made by any Pledgor hereunder or any other Financing Agreement is deemed to be qualified by, and subject to, the provisions of this Section 9."

3. Further Assurances. Pledgors shall execute and deliver such additional documents and take such additional actions as may be reasonably requested by Pledgee to effectuate the provisions and purposes of this Amendment.

4. Governing Law. The rights and obligations hereunder of each of the parties hereto shall be governed by and interpreted and determined in accordance with the internal laws of the State of New York (without giving effect to principles of conflict of laws).

5. Binding Effect. This Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. Effect of this Amendment. Except as expressly amended pursuant hereto, no other changes or modifications to the Pledge Agreement or waivers of or consents under any provisions thereof are intended or implied, and in all other respects the Pledge Agreement is hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof.

7. Counterparts. This Amendment may be executed by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Pledgee reserves the right, in its sole discretion, to accept, deny, or condition acceptance of any electronic signature under this Amendment. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. Delivery of an executed counterpart of a signature page of this Amendment will be as effective as delivery of a manually executed counterpart of this Amendment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the date first above written.

PLEDGORS:

TRAVELCENTERS OF AMERICA INC.,
formerly known as TravelCenters of America LLC

By: _____
Name:
Title:

TA OPERATING LLC

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

PLEDGEE:

WELLS FARGO CAPITAL FINANCE, LLC, as Agent

By: _____
Name:
Title: